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N. 2927

No. 14656

United States
Court of Appeals
for the Ninth Circuit

See vols 2926 - 2928

HANS FORSTER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

(In Six Volumes)

VOLUME IV.

(Pages 1401 to 1868, inclusive)

Appeal from the United States District Court for the Western District of Washington, Northern Division

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(Testimony of Hans Forster.)

Mr. LeSourd: I will object to that as leading.

The Court: Objection sustained.

Mr. Griffin: May I read the cost from the exhibit, if the Court please?

Exhibit 13, under the heading "Less Cost of Goods Sold".

Mr. Moriarty: What year?

Mr. Griffin: 1948. $2,216,589.13; and the same line in Exhibit 14, 1949, $2,034,235.32.

Q. (By Mr. Griffin): And on the basis of that, you suggested that Mr. Taylor recheck his figures?

Mr. LeSourd: Objected to as leading.

Mr. Griffin: Objected to.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): Did you, on the basis of that, [3152] suggest that Mr. Taylor recheck his figures?

Mr. Moriarty: Objected to.

Mr. LeSourd: Objected to.

A. Yes, as stated before——

The Court: The question was answered.

Mr. Moriarty: I move it be stricken.

The Court: I think we will save time to let it stand.

Mr. Moriarty: Very well.

Q. (By Mr. Griffin): Mr. Forster, do you know anything personally about the Federal Tax Laws outside of the fact that you paid taxes?

A. No, I didn't; I never went into it. If I went into it, I wouldn't know anything about it.

Q. Do you know anything about tax returns?

(Testimony of Hans Forster.)

A. No, Mr. Taylor handled all my taxes, so I didn't have anything to do with them.

Q. Do you know anything about the consequences, so far as taxes were concerned, of business transactions; personally, I mean?

A. No.

Q. Did you know anything about the tax situation of your owning 100 percent of the Issaquah Creamery Company and selling to Alpine, or——

Mr. Moriarty (Interposing): Objected to as leading, and not proper redirect. It was gone into thoroughly on direct.

Mr. LeSourd: I will object.

The Court: Objection sustained.

Mr. LeSourd (continuing): ——to this whole method of questioning, that it is all leading.

The Court: The questions are leading.

Mr. Griffin: They are, and on redirect there is one purpose of redirect, and it is generally leading, for your "yes" or "no" answers, but I can approach it the long way.

Q. (By Mr. Griffin): Did you have any education or training of any kind to fit you to determine any of those problems?

Mr. Moriarty: Objected to as not proper redirect and calling for a conclusion of the witness.

The Court: Objection overruled.

A. No, I never had any training.

Q. (By Mr. Griffin): Now, Mr. Moriarty examined in some detail in regard to various items out of the ordinary course of business income.

(Testimony of Hans Forster.)

Mr. Griffin: May I see exhibits 142, 149 and 150, please? [3154]

The Court: What are those numbers again, Mr. Griffin?

Mr. Griffin: 142, 149 and 150.

(Whereupon, exhibits were handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): Exhibit 142, Mr. Forster, are Alpine Dairy checks——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): ——are Apex Farms, Incorporated—Apex Dairy, Incorporated, checks, all payable to Issaquah Creamery.

Was Mr. Taylor the auditor of Apex Dairy, Incorporated, and Apex Farms, Incorporated?

Mr. LeSourd: Objected to as assuming he is an auditor. There was no testimony to that effect.

Q. (By Mr. Griffin continuing): Was the defendant, L. Hicks Taylor, the individual who maintained the books of Apex Farms, Incorporated, and Apex Dairy, Incorporated?

A. Yes, he was secretary and treasurer and accountant for Apex Farms. [3155]

Q. And was he secretary, the same L. Hicks Taylor that was secretary of Issaquah Creamery?

A. That is right.

Q. Did it ever occur to you to tell L. Hicks Taylor about the checks from Apex Farms to Issaquah Creamery?

Mr. Moriarty: Objected to as not proper redirect.

(Testimony of Hans Forster.)

Mr. Griffin: It was examined in detail.

The Court: Objection overruled.

Mr. Moriarty: Yes, but these were deposited in his account, and Mr. Taylor doesn't know anything about that. That is what I examined.

The Court: Mr. Forster.

Mr. Griffin: At this point, I am prepared to call counsel for the Government to the witness stand on the statement that L. Hicks Taylor knows nothing about account 198? I don't think you meant that. I hope not.

Mr. Moriarty: If that was the inference, I mean deposited at the time in 198?

Mr. Griffin: All right.

Mr. Moriarty: I am making no contention in the matter except as to proof.

Mr. Griffin: All right. [3156]

Q. (By Mr. Griffin): Objection is overruled.

A. I figured Mr. Taylor knew all about the bookkeeping and checks that was between the different companies, of Apex Farms, or Alpine Dairy, and Finstad and Utgard, that he was accountant and secretary and treasurer for.

Q. You have answered the question broadly, but I want to take these up that Mr. Moriarty took up in the same way.

Exhibit 149 are checks from Finstad and Utgard to Mary Finstad. Was the same situation existing there as you just testified to as between Apex Farms and Issaquah Creamery?

(Testimony of Hans Forster.)

Mr. Moriarty: Object to the form of the question.

Mr. Griffin: I will reframe the question.

Q. (By Mr. Griffin continuing): Was this the same L. Hicks Taylor that was the accountant for Finstad and Utgard? A. That is right.

Q. Did you have any—did it occur to you to advise Mr. Taylor about the existence of the checks, or their payment? A. No. [3157]

Mr. Moriarty: Objected to as not proper redirect.

Mr. Griffin: Just a moment. Don't answer until the Court rules on the objection, please.

The Court: Well, the objection is overruled.

A. (Continuing): No.

Q. (By Mr. Griffin): Exhibit 150 is another group of checks from Finstad and Utgard to Issaquah Creamery. The same situation exists there?

A. That is right.

Q. These are all checks that went into account 198, are they not?

A. That is what——

(Whereupon, there was a brief pause.)

Mr. Griffin: Let me have Exhibits 203, four, six, seven, eight, ten, eleven.

Q. (By Mr. Griffin): Then the checks I was referring to, referring to the Issaquah Creamery Company checks payable to Issaquah Creamery Company and are those payable to Mrs. Finstad?

The Court: That was in connection with Exhibit 150? [3158]

Mr. Griffin: 150, yes.

(Testimony of Hans Forster.)

Mr. LeSourd: Just a moment. Just a moment, this witness on the stand under oath has testified now with regard to the checks payable to Mrs. Finstad that he didn't consider it necessary to advise Mr. Taylor. I think that testimony should stand in this case.

The Court: I don't know, Mr. LeSourd, that there is any action otherwise.

Mr. LeSourd: I thought he was trying to have that stricken.

The Court: No.

Q. (By Mr. Griffin): Exhibit 204 are three checks signed by Mr. Schneider and yourself to Schneider, Baskett and Baskett; 206—pardon me, 204 are two checks signed by Schneider and L. Hicks Taylor to Baskett and Schneider. 206 are checks signed by Schneider and Taylor to Schneider and Baskett. 207 are two checks signed by Schneider and Taylor to Schneider and Baskett.

Now, did it occur to you to advise Mr. Taylor anything in regard to these checks?

Mr. Moriarty: Objected to as leading and not proper redirect. [3159]

The Court: This calls for a "yes" or "no" answer.

Mr. Griffin: That is right.

The Court: May I inquire, these are all deposits in 198?

Mr. Griffin: No, these are not all deposited in 198. They deal with these payments received as a

(Testimony of Hans Forster.)

result of these checks, the proceeds of which went into 198, not the checks themselves.

Mr. Moriarty: Part of the proceeds went into the Peoples Bank at Renton, also.

The Court: These went into the savings account?

Mr. Griffin: The proceeds he received from these checks, as a result of these checks, went into one of the two savings account. I think that is a fair statement.

Mr. Moriarty: 198 and the Peoples at Renton.

Mr. Griffin: Right.

The Court: The Court will overrule the objection on that one question.

A. No, I never figured I had to, because he wrote the checks, and he made the distribution.

Q. (By Mr. Griffin): Exhibit 208 are checks, Renton Ice and Ice [3160] Cream Company, to Mr. Schneider and Baskett, to which is attached this note that Mr. Taylor says the total is $7,520.

Mr. Moriarty: I don't know whether Mr. Griffin is testifying or framing the question.

Mr. Griffin: I haven't completed it, because I think it is proper to describe an exhibit if I do it honestly.

Mr. Moriarty: The proper way is to hand the exhibit to the witness and ask him what his recollection is.

Mr. Griffin: I will complete my question, if I may.

The Court: You may proceed.

Q. (By Mr. Griffin): Calling your attention to

(Testimony of Hans Forster.)
a note, that has been identified, by Mr. Taylor, total $7,520; did it occur to you to advise Mr. Taylor about these checks?

Mr. Moriarty: Objected to as not proper redirect. I didn't examine about the note.

Mr. Griffin: He examined about the checks, if the Court please, and it is one exhibit.

The Court: Do you understand the checks referred to?

The Witness: Yes. [3161]

The Court: All right. Objection overruled. The question is as to whether it occurred to you.

A. I would have to ask Mr. Taylor. Not after he made distribution. He knew the amount of money I was getting.

Q. (By Mr. Griffin): And Exhibit 211 are four checks, Renton Ice and Ice Cream Company, payable to, two to Schneider, and two to Baskett. Is your answer the same as to those checks?

A. That is right.

Mr. Griffin: Let me see 221 and 222, please.

(Whereupon, exhibits were handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): This same Mr. Taylor was the accountant for Simonson and Forster, was he?

A. (Witness nodded in the affirmative.)

Mr. Moriarty: Objected to as not proper redirect.

The Court: Well, I don't think there is any question involved here. If that issue is questioned,

(Testimony of Hans Forster.)

it may be gone into, but unless it is, the Court will sustain the objection.

Mr. Moriarty: The only thing I examined on [3162] in regard to Simonson and Forster, as I recollect, was a series of checks between Mr. Forster and Oscar Simonson after Taylor had reported to him that Oscar was over $100 on his salary.

Mr. Griffin: And there was no testimony by the witness that the witness arranged anything with Mr. Simonson as to any series of checks.

The Court: Well, that is for the Jury to decide. I am not passing upon that.

Mr. Griffin: Well, if the Court please, the statement of Mr. Moriarty in this courtroom is entitled to weight, and carries weight with me. The Jury is entitled to consider such a statement. There isn't such testimony. He testified to the facts. No arrangement of a series of checks. I must object.

Mr. Moriarty: Maybe we were talking about different things.

The Court: The Court will advise the Jury again that comments of counsel is not evidence, and should be disregarded.

You may proceed, and the objection is overruled.

Mr. Griffin: Thank you.

Q. (By Mr. Griffin): The question was, he was the accountant for Simonson and Forster?

A. He was accountant and secretary-treasurer of Simonson and Forster, yes.

Q. Exhibit 221, also a group of checks, Puyallup Creamery to yourself, each for $100; and 222,

(Testimony of Hans Forster.)

a group of checks, Puyallup Creamery to yourself, each, I believe, for $100—I thought there was another amount in here.

Mr. Moriarty: There was one for two hundred, I believe.

Q. (By Mr. Griffin continuing): Did it occur to you to advise Mr. Taylor anything about those checks? A. No.

Mr. LeSourd: May I ask your Honor to ask Counsel to please frame his questions other than leading?

The Court: Pardon?

Mr. LeSourd: May I ask your Honor to ask Counsel to ask matters other than leading?

The Court: Well, as I understand a leading question, the question answered either by "yes" or "no" is not necessarily leading.

Mr. LeSourd: No, your Honor. [3164]

The Court: Unless Counsel indicates whether it should be "yes" or "no".

Mr. LeSourd: He can ask what occurred to this witness with respect to these matters, what occurred to him mind, but to customarily lead him, I haven't objected to each question, but——

The Court (Interposing): Well, as I gather, the purpose of this examination, it is to only one issue. That is the only question the Court has permitted so far.

Mr. Griffin: That is right.

The Court: And that is whether it occurred to this witness to advise Mr. Taylor as to certain items

(Testimony of Hans Forster.)

deposited in his savings account, and Mr. Moriarty on recross asked the general question as to making the deposits in this account, and also whether it occurred to him to advise Mr. Taylor on certain items, and that is the only questions involved, as I understand it.

Mr. Griffin: Correct.

The Court: And, therefore, the question put in this situation may be properly put in the form asked.

Mr. LeSourd: Very well.

Mr. Griffin: 239, 240, 253, 254, please.

(Whereupon, exhibits were handed to Mr. Griffin by the Clerk.) [3165]

Q. (By Mr. Griffin): Mr. Forster, Exhibit 239, is a group of checks of Arctic Gardens, Incorporated, signed by L. Hicks Taylor, some payable to you and some to Issaquah Creamery Company, and some to Alpine Dairy.

Who kept the entire books and records of Arctic Gardens? A. Hicks Taylor.

Q. Did it occur to you to advise Hicks Taylor in regard to these checks he had drawn?

A. No, it never did.

Q. Exhibit 240 is another Arctic Gardens check signed L. Hicks Taylor, to Alpine Dairy. Would your answer be the same?

A. That is right.

Q. Exhibit 253 is another check, Arctic Gardens, signed L. Hicks Taylor, to Alpine Dairy; and 254, Arctic Gardens, by L. Hicks Taylor, to Issa-

(Testimony of Hans Forster.)

quah Creamery. Would your answer be the same?

A. That is right.

Q. What did you think as far as the keeping of your income tax returns were concerned by Mr. Taylor who was secretary-treasurer——

Mr. Moriarty (Interposing): I am objecting to the form of the question now, if your Honor please.

The Court: It is not completed.

Mr. Moriarty: The form has already indicated it will be objectionable.

The Court: Well, there is indication it may be, but you may complete the question.

Q. (By Mr. Griffin continuing): What did you think Mr. Taylor was doing insofar as your income tax returns were concerned with reference to these items of income and these checks that he had drawn?

A. I figured he had them all included. As far as I was concerned, he was the one who knew about them, and handled it and I figured everything was all right.

Q. Until this trial, had you ever heard of the Hans Forster Transportation Company?

A. No.

Q. You said that you were familiar with Mr. Taylor's handwriting?

A. I think I am, yes.

Q. Now, I will hand you Exhibit A-18 for identification, which has been identified as Economic Bank Check Register of Finstad and Utgard, and ask you if you can identify the handwriting——

(Testimony of Hans Forster.)

Mr. Moriarty (Interposing): Is that in evidence, Mr. Griffin? [3167]

Mr. Griffin: No, I said for identification.

Mr. Moriarty: Excuse me. I see.

Q. (By Mr. Griffin continuing): ——if you can identify the handwriting under date of January 25, 1944, in this exhibit. There are no page numbers that I see. Your answer to that would be "yes" or "no". A. Yes.

Q. Whose handwriting is it?

A. L. Hicks Taylor's.

Mr. Griffin: Now, I offer in evidence the two items upon this page. I am perfectly willing to offer the whole document, and the whole page—either the whole document or the whole page, but, in any event, the two items upon this page identified by the witness as being Mr. Taylor's handwriting.

Mr. LeSourd: No objection, your Honor.

Mr. Moriarty: We have no objection, if the Court please.

Mr. Keesling: We have no objection.

The Court: A-18 will be admitted, insofar as it relates to the handwriting just indicated by counsel.

(Defendants' Exhibit A-18 admitted in evidence.) [3168]

Mr. Griffin: May I read those, then?

The Court: Yes.

Mr. Griffin: It is headed Economic Check and Deposit Register, Form A, date, payment of, in favor of, number, posted on page, amount of check.

(Testimony of Hans Forster.)

This is under date of January 25, 1944. L. Hicks Taylor, No. 341033—strike that 3410, $50; January 25, 1944, W. S. Grant, payment of—blank in each instance—No. 3411, $6,666.66.

Mr. Moriarty: The date, Mr. Griffin?

Mr. Griffin: January 25, 1944.

Q. (By Mr. Griffin): Do you know what this payment of $6,666.66, to W. S. Grant, was in January, 1944?

A. That was for the purchase of stock of Finstad and Utgard, from W. S. Grant.

Q. Exhibit A-21 is in evidence, and referring to the date, January 26, 1944, can you state in whose handwriting those two items are under that date?

A. Hicks Taylor's.

Mr. Griffin: May I read these two to the Jury, please?

It is the same Economic form of Check Register, the same general form, January 26, 1944, James F. Cook—that is in favor of—in payment of, blank—check No. 136, $3,333.33; Verne Egeness; [3169] payment of, blank; check No. 137, $3,333.33.

Q. (By Mr. Griffin): What were those two items, if you know?

A. In payment of stock.

Mr. Moriarty: This is hardly redirect, if the Court please.

The Court: I believe there was some cross-examination by Mr. LeSourd on those items.

Mr. Griffin: Yes, your Honor.

The Court: Is that correct?

(Testimony of Hans Forster.)

Mr. Brody: As to who drew the checks.

Q. (By Mr. Griffin): Mr. Moriarty, do you recall, examined you upon the checks of Apex Farms deposited by you in Account 198? A. Yes.

Q. In your enterprises, to what was the—which one of the enterprises was Apex Farms a part?

Mr. Moriarty: Objected to as not proper redirect.

The Court: This is a preliminary question?

Mr. Griffin: Yes, your Honor.

The Court: Objection overruled.

A. I have 67 percent interest in Apex Farms.

Q. (By Mr. Griffin): Yes, but this enterprise——

Mr. Griffin: I am trying not to lead.

Q. (By Mr. Griffin continuing): ——which one of the—was—which one of your enterprises would it meld into?

A. It melded into the enterprises I sold out to the Consolidated Dairy Products.

Mr. Moriarty: I don't think that is responsive.

Mr. Griffin: I know. It didn't help me any.

(Whereupon, there was a brief pause.)

The Court: We might take a recess at this time.

Mr. Griffin: I can go ahead all right.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions, and asks you to heed it on this occasion.

(Whereupon, the Jury retired from the Courtroom.)

(Testimony of Hans Forster.)

(Whereupon, at 2:45 o'clock p.m. a recess was had until 3:01 p.m. April 2, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:) [3171]

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the Courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Mr. Griffin: Will you mark this for identification, please?

The Clerk: Defendants' Exhibit A-64 marked for identification.

(Defendants' Exhibit A-64 marked for identification.)

Mr. Griffin: I will ask the stipulation that this is a copy of Mr. Taylor's, of December 31, 1932——

Mr. Moriarty (Interposing): 19 what?

Mr. Griffin: 1932.

Mr. LeSourd: We certainly can't stipulate to anything in regard to it, not having seen it before, and would object, not relevant to the case.

Mr. Moriarty: And certainly not proper redirect.

Mr. Le Sourd: And not proper redirect.

The Court: Do you wish to——

Mr. Griffin: (Interposing) Your Honor is at

(Testimony of Hans Forster.)

perfect liberty to see it. I am willing to state the purpose. I only asked for the stipulation because I am not sure that the witness can identify it, is all.

Q. (By Mr. Griffin): Mr. Forster, I hand you Exhibit A-64, for identification. I will ask you if you know what that is? Will you take a look at it, please?

A. Yes, it is the year-end statement of December 31, 1932, of Issaquah Creamery Company, prepared by Mr. Taylor.

Q. And will you look at the pencil notations—I show you that page—pen or ink, notations on that page, that page—by "that," they are unnumbered, —I am just showing pages—in whose handwriting —and that one—in whose handwriting are those?

A. All in Hicks Taylor's handwriting, the figures.

Mr. Le Sourd: Now, if your Honor please, I do not know what the purpose of this is. If there is going to be some offer of proof in connection with it, not knowing the purpose, I would like to suggest that the Jury be excused in connection with it, unless it is [3173] simply a matter of letting us look at it and seeing what it is.

Mr. Griffin: I am now offering A-64. As I stated before, I am perfectly willing to state my reasons, specifically what it meets in cross-examination.

Mr. Le Sourd: We will object to it on the ground it is not proper cross-examination, and irrelevant and immaterial to any issue in the case.

(Testimony of Hans Forster.)

Mr. Moriarty: The Government joins in the objection, and not proper redirect.

Mr. Le Sourd: If there is going to be some discussion about 1932, we suggest the Jury be excused.

Mr. Griffin: If the Court please——

The Court: (Interposing) The Court has no idea of the purpose, and would ask the purpose of it. Is there any objection to asking a statement of the purpose?

Mr. Le Sourd: No objection at all, unless there will be such an argument, as to, in effect, introduce the document by argument, your Honor.

The Court: Well, I will ask counsel for a statement.

Mr. Griffin: One purpose of it is that on cross-examination, Mr. LeSourd went back and examined on [3174] the early years from the beginning of the Issaquah Creamery Company.

In his opening statement, he stated that in those earlier years, Mr. Taylor made complete reports.

Mr. Le Sourd: In my——

Mr. Griffin: (Interposing) In your opening statement, sir, on the early years.

The purpose of this is to show that Mr. Taylor made this report in 1932 and stated it was an audit, that he had compiled the books, and to meet both cross-examinations, it shows that Mr. Taylor carried Mr. Forster in these records with a deficiency, to-wit: a substantial drawing account to which items could be charged. This is Mr. Taylor's audit

(Testimony of Hans Forster.)

of December 31, 1932, of the Issaquah Creamery Company.

Mr. Moriarty: Objected to as immaterial, remote, and not proper redirect.

Mr. Le Sourd: Same objection, your Honor.

If Counsel wishes to show that there was a drawing account for Mr. Forster, there are exhibits in this case showing it, and there is no reason to go to 1932, and it is not proper cross, and irrelevant.

The Court: The Court is inclined to sustain the objection, [3175] Mr. Griffin. If you wish to be heard on it, the Court will hear from you later.

Mr. Griffin: We are right at that point, because I certainly—I don't want to make a statement in front of the Jury, unless your Honor asks me.

The Court: Well, we will excuse the Jury now, if you think it is advisable.

Mr. Griffin: We can state it very briefly, and I think not improperly.

As I have suggested, Mr. LeSourd examined as to the relationship of Taylor and the witness from the time that he started his little cheese factory. His position has been, and throughout, that Mr. Taylor never prepared an audit, and was never an auditor of Issaquah Creamery Company.

Now, having gone—then they both had extensive examination as to why items weren't charged; why Mr. Erickson charged them to certain accounts. The witness has answered Taylor advised him he had a drawing account, and he thought they would be charged to those accounts. This document estab-

(Testimony of Hans Forster.)

lishes then the three things: Taylor made an audit, and was the auditor; he had a drawing account set up in these books, and the witness was absolutely correct in his testimony; [3176] it meets the cross-examination, particularly of Mr. LeSourd, as of the very beginning of this enterprise, and it meets the Government's cross-examination as to why he didn't know where matters were being charged, and why he had a right to assume that they were charged as Taylor had set it up in detail.

Mr. Moriarty: It proves nothing, if your Honor please, except——

The Court: (Interposing) Just a moment. At this time, the Court will adhere to its ruling. It seems to me too remote to meet that purpose, it being 1932, as I understand.

Mr. Griffin: I intend to show it throughout, if the Court please, with 1935, 1939——

Mr. Cox: (Interposing) 1945 and 1949.

Mr. Moriarty: This Indictment dates between the years 1945 and 1949.

The Court: I think probably it has come a little late. We can make an offer of proof now, if you wish to excuse the Jury, or at the conclusion.

Mr. Griffin: I do not wish to excuse the Jury at this hour.

The Court: All right.

Mr. Griffin: I want to go further than an offer of proof in this matter. I want to be heard on it.

The Court: Yes. All right. As I understand, that is only a part of other——

(Testimony of Hans Forster.)

Mr. Griffin: (Interposing) That is the full exhibit, itself, for that particular year.

The Court: Yes. You propose to offer that as a further exhibit and connect it up with the other——

Mr. Griffin: (Interposing) Other years.

The Court: Other years?

Mr. Griffin: Yes, your Honor.

The Court: It may be admissible, and the Court will hear from you on it, but would want to hear from you and get an offer also before we go ahead; so, the Court, not indicating it will not change its present ruling if it thinks otherwise——

Mr. Griffin: (Interposing) I understand.

Q. (By Mr. Griffin): In answer to a question of Mr. Moriarty, confined to the Indictment years, you said that you never dreamed that you were receiving any fund from Issaquah Creamery Company when the barn bills were paid by Issaquah. Do you recall that answer, in substance?

A. That is right.

Q. What—will you explain that answer?

A. As far as I was concerned, I think I explained [3178] to Mr. Moriarty, when I built the barn, it took us about seven or eight months to build it, and the material was bought through the carpenter, and the bills were sent to Issaquah Creamery, but it was not at any time that I felt that Issaquah Creamery Company was paying for it. I figured it was part of my expenses that went against my drawing account.

Q. Well, did you personally make any distinc-

(Testimony of Hans Forster.)

tion in your enterprises as between Issaquah Creamery and Alpine Dairy?

Mr. Moriarty: Just a moment. Objected to as not redirect, and repetitious.

Mr. Griffin: All right; I will withdraw the question as being repetitious.

Q. (By Mr. Griffin continuing): You stated in answer to a question that as far as you could recall, you had never even written a letter to Mr. Taylor; do you recall that?

A. Yes, I am quite positive of it.

Q. Do you have a secretary or a stenographer for yourself?

A. No, I never had a secretary or a stenographer.

Q. Who, generally, wrote letters when you had a [3179] letter to write, if you did?

A. Well, if I had any letters to write, I would talk it over with Mr. Erickson and he would write it out in longhand and let me read it over before he typed it.

Q. Do you recall that Mr. Moriarty asked you why you had hired Touche, Niven, and the accountants? A. Yes.

Q. And do you recall your answer was interrupted and you never got a chance to answer it?

A. Well, after Mr.—after Mr. Marx called me and told me that he wanted to go over our books of the different enterprises, and when I told him that Hicks Taylor had all the books and handled all the books, his answer was that Hicks Taylor

(Testimony of Hans Forster.)

was being sentenced in Tacoma a couple of days from then, and I talked to Mr. Taylor about it, and he told me to tell them—to tell the Internal Revenue Agent to go to hell.

Mr. Moriarty: I think this is repetitious. I think this is the third time we have heard that epithet.

Mr. Griffin: The what?

The Court: I think a number of times.

Mr. Moriarty: This, particularly, because I recognize some of the language. [3180]

(Whereupon, Counsel laughed.)

The Court: We will proceed, Gentlemen.

Mr. Moriarty: My objection is, it is repetitious.

Q. (By Mr. Griffin): Let's pass the epithet.

A. All right; then I called Mr. Kachlein and he said he was going to go to Tacoma with Mr. Taylor and he would talk to Mr. Taylor about it—who we should get as the accountants for the company in Hicks Taylor's absence, and not only while the business was being operated.

And when he came back, he said he talked to Mr. Taylor and they decided between themselves I ought to go ahead and make contact with Mr. Tremper's office, and secure their services, and that is when we hired the accountants.

Q. Did you personally contact Mr. Tremper's firm? A. Yes.

Mr. Moriarty: Objected to as not proper redirect.

(Testimony of Hans Forster.)

The Court: This is meeting Mr. LeSourd's examination; is that correct?

Mr. Griffin: Both Mr. LeSourd's examination and [3181] Mr. Moriarty's.

The interruption was in Mr. Moriarty's question. He never let him complete the answer.

Mr. Moriarty: I didn't intend to.

The Court: Objection overruled. Do you have the question in mind?

The Witness: Yes.

A. I went to Mr. Tremper's office and we secured their services to start in checking over the books and checking over the records and keeping the books for the Hans Forster enterprises—of all my different companies.

Q. (By Mr. Griffin): As of that time, were you aware of any discrepancy in the books of any kind?

A. No, I wasn't.

Q. When—I think you have testified that Mr. Hall was at the Issaquah Bank; is that right?

A. Well, yes, and he was president of the——

Mr. Moriarty: (Interposing) Just a moment. I think it is answered.

A. (Continuing) Yes.

Q. (By Mr. Griffin): All right; and Donaldson and Strack of the Peoples Bank in Seattle? [3182]

A. That is right, yes.

Q. Now, when you conferred with them about loans, did you consider any of them your financial advisers?

(Testimony of Hans Forster.)

Mr. Moriarty: Objected to as not proper redirect, and calling for a conclusion of the witness.

The Court: Objection overruled.

A. No, I didn't consider them financial advisers. That was the place I went to borrow the money, and that is the people I had to see. They were in charge of the loan department.

Q. (By Mr. Griffin): Who did you consider your financial adviser all those years?

Mr. Moriarty: Objected to as repetitious. Not proper redirect. It has been gone over.

The Court: It was covered by the answers.

Mr. Griffin: Extensive cross-examination was had upon financial adviser. I just want the one question, is all.

Mr. Moriarty: I think——

The Court: (Interposing) We will overrule the objection for that one question.

Q. (By Mr. Griffin continuing): Who did you consider your [3183] financial adviser all these years? A. Hicks Taylor.

Q. Had you ever conferred with Mr. George Kachlein about any matter prior to the latter part of March, 1950?

A. I never met Mr. Kachlein until the latter part of March, 1950.

Q. Now, you were interrogated as to whether you talked with Mr. Erickson about milk prices, labor, and such things, and Miss Neukirchen about slow accounts; do you recall that? A. Yes.

Q. Did you discuss, from time to time, your

(Testimony of Hans Forster.)

business affairs with Erickson, Neukirchen, or other employes? You can answer "yes" or "no."

A. No.

Q. Did you ever at any time discuss with any one of your employes the manner in which the books were handled? A. No.

Mr. Moriarty: I certainly think this is not proper redirect. As I recall, we had two days of this.

Q. (By Mr. Griffin): Did——

Mr. Moriarty: (Interposing) I would like your Honor [3184] to rule on my objection.

The Court: There is no question pending. On the next question?

Mr. Moriarty: May my objection be noted at this time?

Mr. Griffin: To the next question?

Mr. Moriarty: Yes; it will be in order, if your Honor please.

Q. (By Mr. Griffin): Mr. Moriarty asked you if you had made any effort to find how much tax was due. Do you recall that question, in substance?

Mr. Moriarty: Yes, sir.

Mr. Griffin: I am asking the witness.

A. We made a very definite effort. In fact, we went as far as going to Washington, Mr. Kachlein and I, for two days.

Q. (By Mr. Griffin): Washington, D.C.?

A. Washington, D.C.; and all we got is just a run-around in different departments. I don't know where we went, but that is all we actually got, and

(Testimony of Hans Forster.)

we was very, very disappointed when we finally didn't get any place. They didn't give us any answer what to do, and how to do it, and when to do it. [3185]

Mr. Moriarty: I think he should fix the time for this.

Mr. Keesling: If the Court please, I didn't hear the first part of the answer. They were all talking.

The Court: I think much of the answer exceeded the question.

Mr. Griffin: Correct.

Q. (By Mr. Griffin): Will you fix what time it was, approximately, that you and Mr. Kachlein made this trip to Washington, D.C.?

A. It was during—I would say—either late fifties, or early '51s. I can't just exactly give you the date. I am sure we could look it up.

Q. And since that time, have you been trying to find out what your tax is? A. We sure have.

Mr. Griffin: That is all; except for the——

The Court: (Interposing) One matter?

Mr. Griffin: The matter in reserve.

Mr. Keesling: If the Court please, I didn't hear the first part of his answer.

The Court: Do you want the whole answer?

Mr. Keesling: Just the answer. [3186]

The Court: Mr. Reporter, read the answer.

(Whereupon, the following was read by the reporter:)

"Answer: It was during—I would say either late

(Testimony of Hans Forster.)

fifties, or early '51s. I can't just exactly give you the date. I am sure we could look it up.

"Question: And since that time, have you been trying to find out what your tax is?

"Answer: We sure have."

The Court: Have you any recross?

Mr. Moriarty: I think I might ask the witness the question:

Recross Examination

Q. (By Mr. Moriarty): If you thought your books were in good shape at the time Mr. Marx talked to you on the first occasion, why didn't you turn the books over to Mr. Marx at that time?

A. Mr. Marx never asked me. In fact, I think he told me to get an accountant, and after he told me he was the one that took—got Mr. Taylor to plead guilty in Tacoma.

Q. So, you went right down on Mr. Marx's statement and hired Mr. Tremper?

A. You told me you didn't want me to repeat it again. [3187]

I can tell you I talked to Mr. Taylor, and he told me. I explained it three times, and this would be the fourth time.

Q. All right.

A. I talked to Mr. Taylor first, and after he made that statement——

The Court: (Interposing) Is there a question now?

Mr. Moriarty: I don't know. I do not mean to

(Testimony of Hans Forster.)

be disrespectful, but I had asked the question, and the witness started to answer.

Q. (By Mr. Moriarty): During the year, you spent fourteen thousand dollars on the barn, didn't you also draw your eighteen thousand dollar salary from Issaquah Creamery Company?

A. I would think so, yes; sure.

Mr. Moriarty: That is all.

Recross Examination

Q. (By Mr. LeSourd): Mr. Forster, Mr. Griffin showed you a number of checks from various—from corporations that you put into 198, and asked if it didn't occur to you to tell Taylor about these and you said it did not occur to you to tell him about them? [3188]

A. Well, I didn't say it didn't occur to me. I said he definitely should have known about them between being accountant and secretary-treasurer for all of the different companies, and a lot of those checks, in the first place, he would talk to me about it, or I talk to him about it.

Q. Mr. Forster, Mr. Griffin asked you question after question using the words, "Did it occur to you?" I even objected to it. Now, is it your testimony that it did not occur to you?

A. No, I answered his questions.

Q. And your testimony was that with all these various checks that he showed you from various of your companies which you put in 198, it did not

(Testimony of Hans Forster.)

occur to you to tell Mr. Taylor that you put them in 198?

A. Well, in answer to your question, there was actually two different ways that Taylor knew about it. In the first place, being accountant; and, the second, because we talked about it.

The Court: Just a minute, Mr. Forster.

Mr. Le Sourd: Mr. Forster, please answer my question.

The Court: Do you want the question read?

Mr. Le Sourd: Please, sir. [3189]

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Griffin: I object to the form of that question, if the Court please. I used certain checks and exhibits only in interrogating the witness.

Mr. Le Sourd: I am talking about the checks and exhibits that Mr. Griffin used.

Mr. Griffin: All right.

Q. (By Mr. LeSourd): Your testimony was that it did not occur to you to tell Mr. Taylor that you had put these checks in 198; wasn't that your testimony?

A. I figured I didn't have to.

Q. Yes; now, was that true of the other checks that came from these various enterprises of yours to Issaquah Creamery Company or Alpine Dairy that you put in 198?

Mr. Griffin: Objected to as not recross examination.

(Testimony of Hans Forster.)

Mr. Le Sourd: It is all tied in with the same thing, your Honor.

The Court: It looks to me, Gentlemen, we are dragging this out more than necessary. I don't wish to limit cross-examination, particularly on a defendant, but [3190] are we not——

Mr. Le Sourd: (Interposing) I don't think so, your Honor. The witness says it didn't occur to him to tell Mr. Taylor, and I am wondering if that is these particular checks, or whether that is true of other checks that he received.

The Court: As I recall, those questions on redirect were opened up, in part, by some of your examination.

Mr. Le Sourd: Yes.

The Court: And particularly by the broad question of Mr. Moriarty that these deposits were made by Mr. Forster in 198 and it didn't occur to him to tell or advise Mr. Taylor about it.

Mr. Le Sourd: Yes; I didn't object to Mr. Griffin asking about this, and I thought it was proper redirect examination, and I think proper recross to clear the matter up.

The Court: You may, if you wish to, frame one question.

Mr. Le Sourd: Well, I have one or two questions on this, your Honor.

The Court: Well, we will see where it goes. You may proceed.

Mr. Le Sourd: Well, I have more than that on

(Testimony of Hans Forster.)

the [3191] specific matters that Mr. Griffin went into.

The Court: I understand. If you will reframe the question, or do you wish to have it read?

Mr. Le Sourd: I think I can reframe it, your Honor.

Q. (By Mr. LeSourd): Was this true that it didn't occur to you to tell Mr. Taylor about putting the checks in 198 only as to the specific checks Mr. Griffin showed you, or was it true, also, as to the other checks coming from your various business enterprises into Issaquah or Alpine that you put in your savings account?

A. I can't answer "yes" or "no." You go ahead and take the whole, of course. I told you before Mr. Taylor knew all about what went into 198. I can't say "yes" or "no," if you bunch it together.

Q. Then your answer is, I take it, that you don't know; is that your answer?

Mr. Griffin: I object to the form of that question.

My objection goes to this, if the Court please: I examined on specific checks. Testimony was not as to the discount checks, and I didn't examine as to those, and I didn't endeavor to open. I was rebuttal. [3192]

The Court: The answer, I think, speaks for itself.

Mr. Le Sourd: Well, I don't think I got any answer to my question, your Honor, but if your Honor wishes me to go on——

(Testimony of Hans Forster.)

The Court: (Interposing) I will ask that the question be read, and the answer read and see if your following question is pertinent.

(Whereupon, the following was read by the reporter:)

"Question: Was this true that it didn't occur to you to tell Mr. Taylor about putting the checks in 198 only as to the specific checks Mr. Griffin showed you, or was it true, also, as to the other checks coming from your various business enterprises into Issaquah or Alpine that you put in your savings account?

"Answer: I can't answer 'yes' or 'no.' You go ahead and take the whole, of course. I told you before Mr. Taylor knew all about what went into 198. I can't say 'yes' or 'no,' if you bunch it together.

"Question: Then your answer is, I take it, that you don't know; is that your answer?" [3193]

The Court: I don't know that that is a proper question.

Mr. LeSourd: Very well.

The Witness: I gave him the answer.

Mr. LeSourd: I will withdraw it.

Q. (By Mr. LeSourd): Now, if it didn't occur to you, Mr. Forster, to tell Mr. Taylor that these particular specific checks were being put in 198, then you didn't tell him, did you?

A. I did tell him. I just got through testifying he knew all about it, what happened to 198. A lot of the checks we had definite discussion about it.

(Testimony of Hans Forster.)

Q. How did you happen to tell him, without it having occurred to you to tell him?

A. Well, we just——

(Whereupon, there was a brief pause.)

Q. There is no answer to that?

(Whereupon, there was a brief pause.)

A. Well, I just got through telling you that Taylor knew about every item that went into 198. I can't go ahead and make it any more specific. I don't know why you are trying to tear it apart and set it up a different way. I can't tell you. I [3194] made that statement, and it is true, and I know it. What should I say?

Q. Now, when I was inquiring of you about the 1949 year-end adjustments, you said that what Mr. Taylor was talking about was the monthly profit for December. Mr. Griffin inquired whether you were talking about annual figures for the year 1949.

Now, will you please clear up for me whether in that discussion about the year 1949 with Mr. Taylor, were you talking about December figures or yearly figures?

Mr. Griffin: Just a moment. Objected to as not redirect; covered by counsel time after time.

The Court: I will overrule the objection. Do you have the question in mind, Mr. Forster?

The Witness: Yes.

A. Well, we had the November statement in front of us. We had the total, and it showed a loss of nine thousand dollars; and then he come in with

(Testimony of Hans Forster.)

the rough figure of between twenty and twenty-five thousand dollars, which should make up a rough figure of the yearly set-up. He didn't give me a statement for December. He just come in with some figures he had in his work sheet, and we went over it, and that is the time we talked about sales, and that is the time I told [3195] him he better try to take a look at the figures again and see if there wasn't something wrong about it, because it was 'way out of line, compared to the sales before.

Q. (By Mr. LeSourd): So that you were talking about the yearly figures?

Mr. Griffin: I submit he testified what they talked about.

Mr. LeSourd: Very well, your Honor, I will proceed from that.

Q. (By Mr. LeSourd continuing): Now, I believe, when I was examining you, you said that this yearly—this annual—profit for 1949 was $127,000—something like that?

A. I said between—between $115,000 and $120,000. I really don't know. It was over one hundred thousand dollars. If you got the figure there, I don't know.

Q. What is your testimony? It was around one hundred and fifteen, or one hundred and twenty?

A. I said over one hundred thousand dollars.

Mr. Griffin: Not proper redirect, your Honor.

The Court: Just a moment. There was a [3196] preliminary question, and the witness reviewed in response, so——

(Testimony of Hans Forster.)

Mr. LeSourd: That is right, your Honor.

The Court: (Continuing) So, I assume you have to clear that issue.

Mr. LeSourd: My recollection is he said one hundred twenty-seven thousand to me and one hundred ten or one hundred fifteen thousand to Mr. Griffin.

Q. (By Mr. LeSourd): And, I want to find out what figure it was that was shown to you by Mr. Taylor at the end of this year?

A. I told you before it was over one hundred thousand dollars. He showed twenty-five thousand dollars profit in December, so it must have been one hundred thousand before. I can't tell you. I know it was out of line, because it showed three times as much as the year before, with the figures he had, and with approximately the same amount of sales. That is all I can remember. I haven't taken a look at the statement, since that time.

Q. Was the figure over one hundred twenty thousand that he showed you?

A. I know it was over one hundred thousand.

Q. Was it over one hundred twenty thousand?

Mr. Griffin: I object as not re-redirect.

The Court: Objection sustained.

Mr. LeSourd: May we have 259 and 259-A?

(Whereupon, exhibits were handed to Mr. LeSourd by the clerk.)

Q. (By Mr. LeSourd): At the time that you went over these figures, you had the November fig-

(Testimony of Hans Forster.)

ure before you, I think you said, in Mr. Taylor's worksheet?

A. I didn't have it in front of me. He had it in front of him.

Q. But you had it in the discussion?

A. That is right, yes.

Q. Now, handing you Plaintiff's Exhibit 259-A, this is Mr. Taylor's worksheet for November 30, 1949, for Issaquah Creamery Company. Would you give us the amount of the net profit for the year to date, up to that time?

A. $121,000, $133.54 ($121,133.54.)

Q. So that, if Mr. Taylor told you the profit for December was twenty or twenty-five thousand dollars, what would that have made the figure he gave you?

Mr. Griffin: Objected to as argumentative [3198] and not redirect, upon anything, if the Court please.

The Court: Objection overruled. This issue has been gone into on each examination back and forth, and I assume that it will take days, so that—go ahead.

Mr. LeSourd: Just trying to clear up the ambiguity.

The Court: The question is, if it doesn't become more confusing; so, go ahead.

The Witness: It does to me, your Honor.

Q. (By Mr. LeSourd): You got the net profit of $121,133.54 at the end of November; now, if you added the December profit of twenty or twenty-five thousand, what would you have?

(Testimony of Hans Forster.)

A. That would be 145 or 146 thousand.

Q. Mr. Taylor never gave you any such figure, did he? A. Which figure?

Q. For the year?

A. He never furnished us with that figure, if that is what you mean.

Q. I am talking about the figure for 1949 that you took exception to.

A. It was over $100,000, I told you. He told me [3199] there was twenty-five thousand dollars' profit in the month of December.

Q. You said that Taylor kept the books at Apex Farms?

A. I said he supervised the books at Apex Farms.

Q. What did Mr. Keck do up there?

Mr. Griffin: Objected to as not redirect.

Mr. LeSourd: Going on with the direct questions.

The Court: Objection overruled.

A. Mr. Keck was under his supervision, and office manager, like Mr. Erickson was.

Q. (By Mr. LeSourd): The checks written from Apex Farms, and Finstad and Utgard and Arctic Gardens were perfectly legitimate checks to pay legitimate expenses; weren't they?

A. As far as I was concerned, there wasn't—in any one of the transactions was anything legitimate.

Q. And the difficulty was that—excuse me, the difficulty with it, so far as this case is concerned,

(Testimony of Hans Forster.)

that when the checks got to Issaquah they were put into 198 instead of Issaquah Creamery Company or Alpine Dairy account; isn't that right? [3200]

A. It looks to me like the difficulty was that Mr. Taylor didn't report them.

Q. Your problem was that when they got to Issaquah they went into 198; isn't that right?

A. That wasn't the problem. As far as 198 was concerned, I figured everybody knew about it.

Q. But there was no problem involved in the writing of those checks by Arctic Gardens or Apex Farms, was there?

A. What do you mean? Hicks Taylor wrote Arctic Gardens checks and in most instances, brought them out and gave them to me.

Q. A perfectly valid good check for a legitimate business expense? A. That is right.

Q. Now, you testified that Mr. Erickson wrote your letters; is that right?

A. Well, whatever letters I wrote, Mr. Erickson wrote.

Q. Do you still say he didn't work under your supervision?

A. Well, he was an employee, just like any employee was in all the rest of the plants.

Q. And you say that you did not confer with Mr. Kachlein about any matters before the latter part of [3201] March, 1950?

A. That is right, yes.

Q. Did you hear Mr. Egeness's testimony here?

A. Yes.

(Testimony of Hans Forster.)

Q. Do you recall his testifying that Mr. Kachlein was involved in the February 28th payments to Mrs. Finstad?

Mr. Griffin: Just a moment. I object to that question—assuming something not in evidence, if you are basing it upon the date of February 28th.

The Court: Do you have a transcript, Mr. LeSourd?

Mr. LeSourd: Pardon?

The Court: Do you have a transcript?

Mr. LeSourd: Yes, I have.

Mr. Griffin: Interested in those final payments and doing anything prior to March, 1950?

Mr. LeSourd: I have the transcript, your Honor.

Q. (By Mr. LeSourd): Do you recall the testimony, Mr. Forster, of Mr. Egeness?

Mr. Moriarty: What page?

Mr. LeSourd: Page 92. [3202]

Q. (By Mr. LeSourd continuing): "Question: Do you know whether or not these final payments to Mrs. Finstad were made——"

Q. (By Mr. Griffin): "Do you know whether or not these final payments to Mrs. Finstad were made after accountants or attorneys other than Mr. Taylor began an investigation of the affairs of Finstad and Utgard?"

And the answer:

"Yes, I believe it was after—I believe it was after Mr. Kachlein came into the picture. I am not positive on that, though."

Do you recall that testimony?

(Testimony of Hans Forster.)

A. No, I don't recall it, but I still think that is the first time I met Mr. Kachlein, the latter part of March, and that is the time we talked to him about taking over the escrow agreement of Mr. Croson's.

Q. You were asked by Mr. Griffin as to the checks to Mrs. Finstad, whether or not it occurred to you to tell Mr. Taylor about them, and you said "No."

Do you mean by that that you knew about those checks?

A. I knew Mrs. Finstad was being paid out of Finstad and Utgard for the contract.

Q. And you knew she was being paid through Mr. Egeness's salary, also? [3203]

A. Of course not. I don't know how we handled it in the books. I knew we bought—I had to pay off the contract, and I knew we didn't pay it; it came out of the company, just like the last two checks. How Mr. Taylor handled it on the books, Mr. LeSourd, I can't tell you.

Mr. LeSourd: That is all.

Mr. Keesling: I have no questions.

Mr. Griffin: That is all, Mr. Forster.

The Witness: I don't believe it.

(Whereupon, there was laughter.) [3204]

* * * * *

PHILIP A. STRACK

upon being called as a witness for and on behalf of the Defendant Forster, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name, and the spelling of your name, please.

The Witness: Philip A. Strack, P-h-i-l-i-p A. S-t-r-a-c-k (spelling).

Q. (By Mr. Brody): Will you please state your full name for the record, Mr. Strack?

A. Philip A. Strack.

Q. Where do you reside, Mr. Strack?

A. At the present time, in Bellevue.

Q. And what is your occupation?

A. I am associated with the Peoples National Bank.

Q. What is your present position at the Peoples National Bank?

A. Chairman of the Executive Committee.

Q. And how long have you been with the Peoples Bank? A. Since May of 1930.

Q. And what positions have you held at the Bank [3226] since you came to the Bank in May, 1930?

A. Assistant Vice-President, Vice-President, Executive Vice-President, President, and Chairman of the Executive Committee, and a Director.

Q. And——

A. (Continuing) And a member of the Board of Directors.

(Testimony of Philip A. Strack.)

Q. Are you acquainted with Mr. Hans Forster, one of the Defendants in this case?

A. Yes, I am.

Q. And can you state what your first contact with Mr. Forster was?

A. Well, approximately 1931 or 1932, I met him as a result of the fact that our bank had acquired, by foreclosure, a stock certificate which represented one-half of the stock of the Issaquah Creamery Company, or approximately one-half of the stock of the Issaquah Creamery Company.

Q. And can you say how that resulted in your contact with Mr. Forster?

A. He was the manager of the Issaquah Creamery Company, and I asked one of my associates to go out and visit with him, and advise him we held the balance of the stock. We understood he was the owner of the remainder of the stock, and as a result of that, he came [3227] in the bank within the next few days, and I met him and talked with him about the affairs of the company.

Q. Was Mr. Forster thereafter a customer of your bank?

A. Yes, I believe continuously since, through his enterprises or personally.

Q. And are you acquainted with L. Hicks Taylor, another one of the defendants here?

A. Yes, I am.

Q. And did you meet Taylor in connection with Mr. Forster's enterprises?

A. I believe I met Mr. Taylor before I came

(Testimony of Philip A. Strack.)

in contact with him, as a result of his being associated with Forster.

Q. And did you have any business dealings with Mr. Taylor prior to your knowing Mr. Forster?

A. No definite business dealings. He was also a customer of our bank, and I knew him in that respect.

Q. And did you know Mr. Harold Erickson, who is a third defendant in this case?

A. No, I do not.

Q. Now, can you state, following your first acquaintance with Mr. Forster, what your relationship to him was? [3228]

A. Well, that of his banker; listening to his requests for financing, which he did request from time to time, and having various negotiations with him along that line.

Q. Did Mr. Taylor ever participate in the negotiations which you had with Mr. Forster?

A. Oh, yes; on many occasions.

Q. And will you state what his participation was?

A. Well, he replied to our questions concerning the financial statements and the finances of the business, the financial statements which were furnished to us to support the credit applications.

Q. Did he, from time to time, accompany Mr. Forster to the bank?

A. Yes, on many occasions.

Q. Now, in your dealings with Mr. Forster, whom did you represent?

(Testimony of Philip A. Strack.)

A. The Peoples National Bank.

Q. And whose interests were you looking after in your dealings with Mr. Forster?

A. Those of the bank.

Q. And if a loan were favorable to Mr. Forster, and unfavorable to the bank, what would your reaction on the loan be? [3229]

A. I think we would have had to decline it.

Q. In other words, will you state whether you were intending to act as a personal financial adviser to Mr. Forster?

A. No, I had one function, and that was to represent the bank. Originally, to recover, if we could, the amount that was represented by this original half interest, or approximate half interest, in this Issaquah Creamery Company, and then later to finance, as best we could, the operations of Hans Forster.

Q. Now, did you receive periodic financial statements of Mr. Forster's enterprises, and Mr. Forster, personally?

A. Annually, all those we were financing, at least, and, on occasions, interim statements at other dates than those of the closing of their year end.

Q. Do you know who made up those statements which were submitted to you?

A. Well, we——

Mr. Moriarty: (Interposing) Answer that "yes" or "no".

Q. (By Mr. Brody): Do you know who made them up?

(Testimony of Philip A. Strack.)

A. Do I know who made them up? [3230]

Mr. Moriarty: That is the question.

A. (Continuing) No, I can't say I know who made them up.

Q. (By Mr. Brody): Now, if you had any question concerning those statements, to whom would you apply for information? A. Mr. Taylor.

Q. And have you ever asked Mr. Forster for any type of explanation of questions arising from his statements?

A. From time to time, especially in the early years, but without any result.

Q. And if you obtained no result from him, what would you then do?

A. We would ask Mr. Taylor.

Q. And the statements that were submitted to you, did you rely on them as Mr. Taylor's work?

A. Yes, we considered them as Mr. Taylor's work and our decisions on credit were based on those figures.

Q. Now, in the years 1945 through 1949, can you recall any specific transactions in which you dealt with Mr. Hans Forster on his enterprises?

A. Any specific transactions?

Q. That is right. [3231]

A. Well, the only ones I can recall are a series of discussions which we had concerning the construction of the ice cream plant.

Q. And can you state briefly what the subject-matter of those discussions was?

A. Well, Mr. Forster was desirous of building

(Testimony of Philip A. Strack.)

a new plant for the Alpine Ice Cream Company, and we had several discussions with reference to the money he needed to pay for the cost of the construction and for the equipment.

There were several propositions discussed before we finally came to a definite deal.

Q. In what manner was it—did the bank ultimately participate in financing of that construction?

A. We made a loan to Alpine Ice Cream Company.

Q. And was that a secured or unsecured loan?

A. Unsecured loan.

Q. And can you state on what basis you made an unsecured loan to the Alpine Ice Cream Company for that construction?

A. With the endorsement of Hans Forster personally.

Q. And did you make any inquiry as to Hans Forster's personal assets? [3232]

A. Yes, we did.

Q. Prior to accepting his personal endorsement and guarantee?

A. Yes, I did. In one of the original discussions, his personal financial affairs were explained to us in some detail.

Q. Now, can you recall who was present at that discussion when his personal financial affairs were explained?

A. I can't pin it down to one discussion. I think there were several, but the—in one or two discus-

(Testimony of Philip A. Strack.)

sions, I will say Mr. Forster and Mr. Taylor were present.

Q. Now, can you recall being present at such a discussion on February 12, 1948?

A. I couldn't specify the date, without referring to our credit files.

Q. Now, I will show you, in order to refresh your recollection, if it will, Defendants' Exhibit A-1, which are sheets from your credit file, and Alpine Ice Cream Company. Does that serve to refresh your recollection as to the events of February 12th?

A. Well, my recollection is that we had a discussion earlier in 1948 concerning this matter, and this would indicate that they were held on, or just [3233] prior to, February 12, 1948.

Q. And who was present at those discussions?

A. Mr. Taylor and Mr. Forster.

Q. And can you state what assets of Mr. Forster were mentioned in this review of his personal financial situation?

A. Well, there was specifically mentioned that he had a substantial savings account, and also a holding of Government bonds.

Q. And were the extent of that—now, where was that savings account, mainly in the bank at Issaquah?

A. No, partially in the bank at Issaquah, and partially with us.

Q. And was the extent of the account in Issaquah mentioned or revealed?

(Testimony of Philip A. Strack.)

A. My recollection is that there was about two hundred thousand dollars in savings funds involved.

Mr. Brody: You may inquire.

Cross Examination

Q. (By Mr. Patten): Mr. Strack, you referred to various financial statements which Mr. Forster filed with your bank. You stated that you relied upon those financial statements, in making loans; is that correct, sir? [3234]

A. That is right.

Q. Whose signature appeared on those financial statements?

A. I would say largely Hans Forster's signature.

Q. Yes, sir; in reference to this conference around February 12th, 1948, at which was discussed the financing of the Alpine Ice Cream Company, I understand that the bank required certain additional information concerning Mr. Forster's personal assets as distinguished from his business assets; is that correct?

A. Well, we had his personal financial statement at that moment, and it was explained where the cash was held, how it was held.

Q. I understood from your testimony that there was some discussion as to the nature and extent of these assets; is that correct, sir?

A. Yes.

(Testimony of Philip A. Strack.)

Q. Who supplied that information and the discussion, sir?

A. That would be difficult for me to state at this time.

Q. Did Mr. Forster or Mr. Taylor supply that information? [3235]

A. I wouldn't attempt to say. I just don't recall. I know in the discussions it was brought out, but whether it was mentioned by Mr. Forster or Mr. Taylor, I couldn't recall at this time.

Q. Now, in the discussion of the feasibility of merging the Arctic Gardens with the Alpine Ice Cream Company; or, rather, changing the corporate name, were these discussions of changing the corporate name of Arctic Gardens to Alpine Ice Cream Company and the bringing the business of the Ice Cream business into that corporation, was that the discussions to which you have reference?

A. Well, that was part of the discussion at, approximately that period of time, but whether that took place in the same discussions, I couldn't recall at this time.

Q. Were the advantages or disadvantages of this arrangement discussed?

A. At some time or another, in the discussions at approximately that time, I have recollection that the Arctic Gardens, the old corporate structure of Arctic Gardens was going to be used for Alpine Dairy, but that is the extent of my recollection of those discussions.

(Testimony of Philip A. Strack.)

Q. What was the advantage of that arrangement, [3236] sir?

A. I wouldn't have any way of knowing.

Q. Would reference to your notes refresh your memory on that?

(Whereupon, witness examined some papers.)

Q. (Continuing) I hand you Exhibit 135.

A. Yes?

Q. Isn't it a fact that tax advantages were one of the reasons for this arrangement, sir?

A. Well, they apparently were explained to me at that time, according to this memorandum which I wrote on April 6, 1950. No, which Mr. Donaldson wrote; not myself.

Q. Can you tell who explained the tax advantages of this arrangement, sir?

A. No, I cannot.

Mr. Patten: Thank you very much.

Mr. LeSourd: Is that all?

Mr. Patten: Yes.

Cross Examination

Q. (By Mr. LeSourd): Mr. Strack, as a banker representative of the bank, were you interested in the financial success of the customers to whom you had loaned money?

A. Yes; that is always a consideration. [3237] The primary one, of course, being the protection of the bank's interest.

Q. The bank is better protected if the customer is successful; isn't it? A. That is true.

(Testimony of Philip A. Strack.)

Q. And from time to time, did you not discuss with Mr. Forster the financial problems in his various enterprises? A. Yes, we did.

Q. From time to time, did you not discuss with Mr. Forster the matter of acquisition of the various new businesses?

A. After they were acquired.

Q. You don't recall any discussion before businesses were acquired?

A. Probably so, but in most cases, we got into the discussion after the deal had been made.

Q. But there were some, were there, where Mr. Forster talked to you before he went about acquiring businesses?

A. Mr. LeSourd, I have no recollection of any definite——

Q. (Interposing) It has been quite some time, I know. Do you recall Apex Farms, as to whether the Bank recommended or suggested to Mr. Forster the [3238] acquisition of that enterprise?

A. No; I do have some recollection of that, now that you recall that name. Mr. Forster originally suggested it, and, because I knew both parties, I did enter into some preliminary negotiations at the point that a conclusion was expressed. I simply stepped out, and from there on, the deal was made without any outside assistance.

Q. Do you recall making recommendations to Mr. Forster, I think about 1940, concerning the building of a milk plant on Rainier Avenue, and hiring of architects, and other such things?

(Testimony of Philip A. Strack.)

A. Not specifically, Mr. LeSourd. That has been a long time ago.

Q. You would have to refer to your credit notes as to that, would you? Do you recall any other acquisitions, or building, or purchases, that Mr. Forster talked to you about?

A. I can't recall any specific instances.

Q. Well, as far as your recollection goes, it is possible that Mr. Forster discussed various of these acquisitions with you from time to time, during these years?

A. It is possible, but, as I mentioned before, it was usually after they had been acquired. [3239]

Q. You were asked, on direct examination, as to whether in these discussions on the Alpine Ice Cream plant, it was revealed, or stated, as to the amount in these savings accounts, and your answer simply said, I think, that it was your recollection that two hundred thousand dollars was involved.

Do you recollect independently at this time as to exactly what statements were made in that respect?

A. Exactly what statements were made?

Q. Yes.

A. No, I couldn't give an exact statement that was made at that time.

Q. Do you recollect that it was two hundred thousand dollars stated to be in the savings account? A. That is my recollection, yes.

Q. Do you have the May 24, 1947, notes there?

A. Of what company?

(Testimony of Philip A. Strack.)

Q. I think it is Issaquah Creamery Company.

A. No, I have not.

Q. Maybe Alpine Dairy; do you have the Alpine Dairy notes for that date?

A. Yes; May 24—what date?

Q. 1947. A. No. [3240]

Mr. Moriarty: What exhibit do you have?

Mr. LeSourd: 130, Mr. Moriarty.

Q. (By Mr. LeSourd): Now, I take it, Mr. Strack, that the only real recollection you have, independent of the figures discussed, is the figure $200,000 that sticks in your mind from those conversations? A. That is right.

Q. And you can't recall today who said what, and what figures were actually stated?

A. Not specifically the words that were said, and by whom, no.

Q. Referring you to notes in your credit memorandum, May 24, 1947, Plaintiff's Exhibit 130, which bears the initials "P.A.S."—I take it those are your initials? A. Yes.

Q. I ask you to notice the memorandum on the bottom of the first page, and state whether or not that refreshes your recollection as to whether the two hundred thousand dollar figure, you mentioned was savings account, or was to include other assets?

A. Bear in mind that the mention I made was in 1948. This is May, 1947.

Q. This is an entirely different conversation [3241] you are talking about?

A. Well, the conversations about which I testi-

(Testimony of Philip A. Strack.)

fied before were those which took place in early 1948, around February 12, as indicated by you and they concerned the desire of Mr. Forster to construct a new ice cream plant. This is, of course, May, 1947.

Q. Yes; and in May, 1947, do those notes refresh your recollection as to some amount that Mr. Forster had mentioned to you as being in savings account?

A. This indicated that he had mentioned that he had sixty thousand dollars in the savings account.

Q. Do you have any notes of these conversations in May, 1948?

Mr. Cox: February.

Q. (By Mr. LeSourd continuing): February, 1948; excuse me.

A. Only what are indicated in the credit file.

Q. Is there any direct indication in your credit file for that date that statements were made during the conversation as to exactly the amount in any particular accounts?

A. Bear in—may I mention that this comment was not made by me? [3242]

Q. I see.

A. If you want to ask me of my recollection.

Q. I am sorry. I hadn't realized that, Mr. Strack. Then I take it that your recollection is that there was some figure of two hundred thousand dollars involved; that you can't recollect exactly what was said, or by whom?

A. May I say that it was $200,000 of available

(Testimony of Philip A. Strack.)

funds? It could have been that that—part of that was Government bonds.

But, considering the amount of investment that Mr. Forster was contemplating making, and that we considered we might be willing to loan him, my recollection is it was about two hundred thousand dollars in available funds, and I might be confused as to whether they were all in savings account or whether that included Government bonds.

Mr. LeSourd: That is all.

Mr. Keesling: No questions.

The Court: Anything more, Mr. Brody?

Mr. Brody: Yes, your Honor, I will have a few more questions.

Redirect Examination

Q. (By Mr. Brody): Concerning the signatures about which Mr. [3243] Patten asked you, Mr. Strack, why did you require a signature on the statement that was submitted to you?

A. Well, the National Bank Examiner will not consider a statement as of any value in his examination unless it contains a signature, so we either obtain a signature of an accountant, or an officer of the corporation; usually an officer of the corporation.

Q. And if Mr. Forster's signature appeared on the statements, on whom did the Bank rely for the accuracy and reliability of the statements?

A. We relied on Mr. Taylor.

(Testimony of Philip A. Strack.)

Q. Well, did you, in fact, rely on Mr. Forster as the author of those statements?

A. No, we did not.

Mr. Brody: Your Honor, there has been discussion and cross-examination concerning certain entries in these credit files. I wonder if I might have permission to read to the Jury the entries from February 12, 1948, which is Defendants' Exhibit 1?

The Court: That is admitted, is it?

Mr. Brody: Yes.

The Court: In all respects?

Mr. Brody: Yes.

The Court: You may read it.

Mr. Brody: The entry for February 12, 1948, [3244] "P.A.S.,"—an abbreviation for Philip A. Strack—"has had several discussions with Hans Forster and his accountant, Hicks Taylor, over financing of a new ice cream plant on their present property on 4058 Rainier Avenue. It is anticipated that the plant and equipment will cost approximately $200,000 and while they originally asked for a maximum loan, they have now agreed that they can get by with a mortgage loan of $100,000. We have been supplied with financial statements as of December 31, 1947, from Issaquah Creamery Company, Incorporated, Alpine Dairy, Apex Farms, Incorporated, and Finstad and Utgard, Incorporated. Hans Forster has with the Washington State Bank, Issaquah, approximately $100,000 on deposit. He has better than $60,000 on deposit in our savings account. He owns free and clear fifty thousand dol-

(Testimony of Philip A. Strack.)

lars in U. S. Treasury Bonds, and has securities which have a market value of approximately $24,000. He will sell his securities and use some of his reserves to cover the difference between a $100,000 mortgage and the cost of the building. We have asked that he give us the name of the contractor, showing us his firm bid and other details concerning the final [3245] construction. The application was discussed at our Directors' Executive Committee on February 10, and they approved our loaning $100,000, payable $25,000 a year, secured by real estate and chattel mortgage on the present plant and equipment, plus the new addition. We have attempted to discourage Hans Forster from building at this time, but he has a number of logical arguments, and we finally committed to go along on the above basis because of our past experience with Hans Forster and on the strength of his financial statements."

No further questions.

The Court: Anything, Mr. Patten?

Mr. Patten: Yes, sir. May I read part of Exhibit 134 to the Jury?

The Court: Are those notes?

Mr. Patten: No, sir; it is a financial statement, a form at the bottom of the financial statement:

"To Peoples National Bank of Washington: The undersigned, for the purpose of procuring credit from time to time from you for the negotiable paper of the undersigned, or through endorsement, guarantee or discount of the paper [3246] of others or

(Testimony of Philip A. Strack.)

in any other manner, directly or indirectly, furnishes you with the foregoing and the following statement and information contained on both sides of this sheet, both written and printed, and including supplemental statement below, which fully and truly sets forth the financial condition of the undersigned on the date stated, which you may rely upon as continuing to be full and accurate, unless and until notice of change is given you. The undersigned has no liabilities of any nature whatsoever other than as stated below, and agrees to notify you promptly of any change that reduces or in any way affects adversely the pecuniary responsibility of the undersigned."

There are some other paragraphs which don't appear important.

And, "Signed, Hans Forster; dated 4/6/50."

That is all.

Q. (By Mr. Brody): Mr. Strack——

The Court: (Interposing) Just a moment. Is there anything further? [3247]

Mr. LeSourd: Nothing further.

Mr. Brody: I am sorry.

Q. (By Mr. Brody): Would you look at Exhibit 34. Is that a standard form of the Peoples National Bank? A. Yes, it is.

Q. And can you state on whom you relied for the financial information contained in that form; on whom the Bank relied?

Mr. LeSourd: If he knows.

A. Mr. Brody, I don't believe that I can testify

(Testimony of Philip A. Strack.)

as to the origin of this information. I have testified that we relied for years on Hicks Taylor for the financial information concerning Hans Forster's enterprises, or any additional information that was required to explain items on the statement, but as far as this particular statement is concerned, I can't verify as to the source of that information.

Q. (By Mr. Brody): Well, until the time that Mr. Forster and Mr. Taylor became disassociated, did you ever rely on any other accountant for information relating to the affairs of Mr. Forster?

A. Any other accountant?

Q. That is correct. [3248]

A. No, we did not.

Mr. Brody: That is all.

Mr. Moriarty: That is all.

Mr. LeSourd: No questions.

Mr. Keesling: No questions.

The Court: That is all, Mr. Strack.

(Witness excused.)

Mr. Brody: Mr. Donaldson. [3249]

FRANK B. DONALDSON

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Will you please state your full name once more, Mr. Donaldson?

A. Frank B. Donaldson.

(Testimony of Frank B. Donaldson.)

Q. And your residence?

A. Mercer Island.

Q. What is your occupation, Mr. Donaldson?

A. I am with the Peoples National Bank.

Q. And what position do you hold at the Peoples National Bank? A. A Vice-President.

Q. How long have you been with the Peoples National Bank, Mr. Donaldson?

A. Since December 15, 1926.

Q. And will you state briefly what positions you have held at the Peoples National Bank?

A. Teller, Credit Manager, Assistant Cashier, Assistant Vice-President, and presently, Vice-President.

Q. How long have you known Mr. Forster?

A. Since about 1930 or 1931. [3250]

Q. Can you state in what connection you met Mr. Forster?

A. In connection with his operations and loans thereof of the Bank.

Q. Can you state since your first acquaintance with him what the nature of your transactions with Mr. Forster have been?

Mr. Moriarty: This is quite remote, if your Honor please.

The Court: I don't know the purpose of the testimony. Is this character?

Mr. Brody: No, this is not a character witness, and this is a preliminary question.

Mr. Moriarty: We had it on direct and cross-examination of this witness.

(Testimony of Frank B. Donaldson.)

Mr. Brody: Your Honor, it simply——

Mr. Moriarty: (Interposing) On February 4th or 5th, I believe, the gentleman appeared the last time.

Mr. Brody: It is simply to identify this witness for the Jury and one or two preliminary questions.

The Court: You may proceed.

The Witness: Will you repeat the question for me? [3251]

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. In discussing financial needs and financing the acquisition of new plants and building and equipment.

Q. (By Mr. Brody): Did your negotiations or transactions with Mr. Forster mostly concern the borrowing of money from the bank by Mr. Forster?

A. That is correct.

Q. Are you acquainted with Mr. Hicks Taylor —another defendant in this case?

A. I am.

Q. How long have you been acquainted with Mr. Taylor?

A. I would say approximately the same time; since around 1930 or '31.

Q. Have you dealt with Mr. Taylor in connection with the affairs of Mr. Forster?

A. Yes. We have depended upon him in our discussions, yes.

(Testimony of Frank B. Donaldson.)

Q. Has Mr. Taylor from time to time accompanied Mr. Forster in discussions with you?

A. Yes, he has. [3252]

Q. And what part did Mr. Taylor play in those discussions?

A. Primarily, in enlightening us or in going over items of the financial statement itself.

Q. Did you receive, or did the Bank receive, periodic financial statements from Mr. Forster and the businesses in which he was interested?

A. Yes, we did.

Q. Approximately how often?

A. At least, annually, and occasionally, we would have interim statements.

Q. Did you ever discuss those statements with Mr. Taylor? A. Yes, we have.

Q. Did you ever discuss them with Mr. Forster?

A. Frequently, he would be in with Mr. Taylor, but we had to depend upon Mr. Taylor to give us the information we wanted from the statement.

Q. And did you rely on Mr. Taylor as the author of those statements?

A. Yes, we always believed so.

Q. And did you rely on his accounting knowledge and reputation?

Mr. Moriarty: Object to the form of the question. [3253]

The Court: Objection sustained.

Q. (By Mr. Brody): Now, in the years 1945

(Testimony of Frank B. Donaldson.)

through 1949, did you have dealings with Mr. Forster and Mr. Taylor? A. Yes.

Q. Did you participate in any way in the acquisition of the—of what later became Apex Farms, by Mr. Forster?

A. I was in some of the discussions, yes.

Q. Did Mr. Taylor participate also in those?

A. He was present at some of the discussions, yes.

Q. And what part did he play in those negotiations and discussions?

A. Again, in giving us information on the financial details.

Q. Now, when you say "information on the financial details," would you state——

A. (Interposing) Well, as to the statements, and as to what financing was going to be required for plant and equipment, and the procedure of repayments.

Q. Now, did you ever ask Mr. Forster to explain a financial statement to you?

A. We have, yes.

Q. Did you obtain a satisfactory result? [3254]

A. No.

Mr. Moriarty: Objected to as calling for a conclusion of the witness.

Q. (By Mr. Brody): And——

Mr. Moriarty: (Interposing) Just a moment.

The Court: I think the objection will be overruled, Mr. Moriarty.

Mr. Moriarty: All right.

(Testimony of Frank B. Donaldson.)

Q. (By Mr. Brody continuing) ——on such occasions, would you receive any directions from Mr. Forster as to obtaining of further information?

A. Yes, he frequently would refer us to Mr. Taylor for further information.

Q. Now, Mr. Strack has testified concerning the plans for the construction of the Alpine Ice Cream Company. Did you take part in negotiations relating to a loan so that Mr. Forster could build an ice cream plant?

A. Yes, I was in quite a number of the discussions.

Q. Did Mr. Taylor participate in those discussions and negotiations?

A. He was in several of them, yes, sir.

Q. And will you state what part he played?

A. Well, getting us financial statements as to the existing condition of Hans Forster's enterprises and projecting the financing as to what would be required, and so on.

Q. And do you have a recollection of this meeting which took place in February, 1948?

A. Yes, I do.

Q. And can you recall that Mr. Forster's personal assets were reviewed at that time?

A. There was a discussion on his personal assets, yes.

Q. And were his bank accounts mentioned?

A. Yes.

Q. And could you state specifically what bank accounts of his were mentioned?

(Testimony of Frank B. Donaldson.)

A. Mentioning the Washington State Bank at Issaquah and our Bank.

Q. And did Hicks Taylor attend that meeting?

A. He was present, yes.

Q. Now,——

Mr. LeSourd: (Interposing) I might suggest to your Honor that this has been gone over before. Mr. Donaldson was previously on the stand. If there is anything new, I have no objection.

Mr. Brody: I don't believe this witness was able [3256] on cross-examination to go into these matters.

The Court: You may proceed.

Mr. Moriarty: As I remember it, he went rather fully.

Q. (By Mr. Brody continuing) Now,——

Mr. Moriarty: (Interposing) He was about two days on the stand.

The Court: You may proceed.

Q. (By Mr. Brody continuing) Did you participate in negotiations relating to remodelling of the Apex Farms?

A. In—a few times, but not too frequently, no.

Q. Do you know whether or not the bank loaned any money to facilitate that project?

A. For the Apex?

Q. Yes. A. Yes, sir.

Q. Do you know whether or not Mr. Taylor participated in the negotiations leading up to those loans?

A. It is my understanding that he was present.

(Testimony of Frank B. Donaldson.)

Mr. Moriarty: Just a moment. I move to strike [3257] the answer as not responsive, based on hearsay.

I move it be stricken, and the Jury instructed to disregard it.

Mr. Brody: I will withdraw it.

The Court: You withdraw it?

Mr. Brody: Yes.

The Court: All right, the question may be withdrawn, and the Jury will disregard the answer.

Q. (By Mr. Brody): Now, in your financial dealings, Mr. Donaldson, with Mr. Forster, by whom were you employed when you entered into those transactions and dealings?

Mr. Moriarty: Objected to as repetitious. He has testified two or three times.

Mr. Brody: This goes to Mr. LeSourd's cross-examination as to whether or not these——

Mr. Moriarty: (Interposing) Mr. LeSourd hasn't cross-examined this witness.

Mr. Brody: Mr. LeSourd's cross-examination of Mr. Forster.

Mr. Moriarty: Then he can't compare——

The Court: (Interposing) Just a moment. I don't think there is any question.

Mr. Donaldson was employed by the Bank at all times, were you not? [3258]

The Witness: Yes, sir.

Q. (By Mr. Brody): Did you ever receive any compensation from Mr. Forster for financial advice? A. No, sir.

(Testimony of Frank B. Donaldson.)

Q. And whose interests were you representing and protecting during your negotiations with Mr. Forster? A. The Peoples National——

Mr. Moriarty: (Interposing) Objected to as immaterial and repetitious, whose interests. He was employed by——

The Court: (Interposing) Objection sustained.

Q. (By Mr. Brody): Now, are you acquainted with Mr. Erickson, a defendant in this case?

A. Only since the case has commenced.

Mr. Brody: You may inquire.

Cross Examination

Q. (By Mr. Moriarty): I take it that you discussed matters in the absence of Mr. Taylor with Mr. Forster? A. Oh, yes; we have.

Q. Many times? [3259] A. Yes.

Q. He was in the Bank almost weekly?

Mr. Griffin: Objected to as repetitious. He testified sometimes twice a week on your examination.

Mr. Moriarty: If that is admitted, I withdraw the question.

Mr. Griffin: That was in February.

Mr. Moriarty: If it is conceded, I withdraw the question.

Q. (By Mr. Moriarty): In these discussions with Alpine Ice Cream Company, calling your attention to Exhibit 135, and before I ask the question I would like you to refresh your recollection, if it does,—that paragraph that I pointed to.

That is your memorandum, is it not?

(Testimony of Frank B. Donaldson.)

A. Yes, that is correct.

Q. And it refers to an attorney being consulted. Who was the attorney?

A. I am sorry; I would not know who his attorney would be.

Q. Would it be Mr. Jones of Jones and Bronson, or a member of his firm and staff?

A. As I recall, about this time Mr. Forster had some attorney with Jones and Bronson, Jones or some [3260] name like that—one member.

Q. Mr. McEwen? A. Mr. McEwen, yes.

Q. Mr. Grill?

A. There was a McEwen he used for some of his work there.

Q. You were discussing taxes and tax advice at that time, weren't you?

A. In using the corporation, yes.

Q. For the purpose of reducing taxes?

A. There was tax advantage to Mr. Forster. Apparently that had been recommended along those lines.

Q. Tax advantages are usually tax savings, aren't they? What other advantages are tax advantages except savings of taxes?

A. As I understood——

Mr. Griffin (Interposing): Objected to as not cross-examination.

The Court: Objection sustained.

Q. (By Mr. Moriarty): Mr. Forster was present at those discussions? A. Yes, sir.

Mr. Moriarty: That is all.

(Testimony of Frank B. Donaldson.)

Cross Examination

Q. (By Mr. LeSourd): Mr. Donaldson, Mr. Brody read to the Jury notes which I think were written by you in regard to the meeting of February, 1948, or a series of meetings, and in so reading, he—the note said that you had attempted to discourage Mr. Forster from building this building at Alpine Ice Cream. Would you call that financial advice?

A. No, sir, because——

Q. (Interposing): What sort of advice would you call that?

A. Because it involved too large a mortgage for us to attempt to underwrite. We didn't think it feasible.

Q. You wouldn't call that financial advice?

A. We were representing the Bank's interest at the time.

Q. In attempting to discourage him from putting up a building? A. That is correct.

Mr. LeSourd: That is all.

Cross Examination

Q. (By Mr. Keesling): Mr. Donaldson, I understand that during the Indictment period, from 1945 to 1950, or until 1953, you didn't even know Mr. Erickson? [3262]

A. That is correct. I knew him by name only.

Q. He didn't enter into any of this?

A. Not at all.

Mr. Keesling: No further questions.

Mr. Griffin: That is all.

The Court: That is all, Mr. Donaldson.

(Witness excused.) * * * * * [3263]

RAYMOND J. SCHNEIDER,

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Direct Examination

The Court: You have been sworn, Mr. Schneider, haven't you?

The Witness: Yes, sir.

Q. (By Mr. Cox): I believe, Mr. Schneider, that you testified when you were on the stand previously that when you and Mr. Baskett and Mr. Forster first went into Renton, and took over the business of Renton Ice and Ice Cream Company from Mr. Williams, that it was thought best to keep Mr. Forster's name out of the picture, because Mr. Williams had some feeling about him because of the competitive situation; is that true?

A. Yes, sir.

Q. I am not sure about this because you have been in Court some times and not other times. Were you—you were here during part of the time when Mr. Forster testified, were you not?

A. Yes, I was.

Q. Were you here on the day when he testified, as I recall it, that there may have been certain [3323] competitive reasons of his own for his wanting to stay in the background?

(Testimony of Raymond J. Schneider.)

A. I heard him testify about Mr. Williams, and that might have been mentioned, too.

Q. Very well; did you try, as far as possible, to keep Mr. Forster's participation in the Renton Ice and Ice Cream Company in the background, as far as the public was concerned?

A. Yes. It wasn't difficult. We just didn't show that he was in the picture.

Q. You filed an application shortly after you started business for a wholesaler's permit, with the Federal Alcohol Administration, did you not?

A. Yes.

Mr. Cox: Will you mark this, please?

The Clerk: Defendants' Exhibit A-67 marked for identification.

(Defendants' Exhibit A-67 marked for identification.)

Q. (By Mr. Cox): Now, Mr. Schneider, handing you what has been marked for identification as Defendants' Exhibit A-67, can you tell us what that is?

A. It is probably a statement that we furnished to the Alcohol Tax Unit in getting our permit.

Q. Is there anything on the back of the document which would indicate whether or not it was in fact filed with the Alcohol Unit and received by them?

A. Received October 16, 1942, District Supervisor, Alcohol Tax Unit, Seattle, Washington.

Q. In asking you to refresh your recollection from that document, Mr. Schneider, what statement

(Testimony of Raymond J. Schneider.)

did you make to the Alcohol Tax Administration as to the ownership of stock in the Renton Ice and Ice Cream Company?

A. Capital stock, fully paid in cash. Do you want me to read this?

Q. The portion referring to the stock, yes, sir.

Mr. Griffin: Just a moment.

Q. (By Mr. Cox continuing): I don't want you to read it, but to refresh your recollection, if it does, as to what you said—who you said were the owners of the stock in Renton Ice and Ice Cream Company at that time. A. Yes.

Q. Having read that, does it refresh your recollection? Do you recall what you then advised the [3325] Alcohol Tax Administration?

A. I can tell you what this paper says.

Q. This doesn't refresh your recollection as to what was then said?

A. I wouldn't think so.

Mr. Cox: Well, we would then at this time offer A-67 in evidence, your Honor.

May I have it, please?

(Whereupon, exhibit was handed to Mr. Cox by the witness.)

The Witness: I may not have gotten your meaning, but that is my answer.

Mr. Obenour: No objection.

Mr. Griffin: May I ask one question, if the Court please?

The Court: You may.

(Testimony of Raymond J. Schneider.)

Mr. Griffin: Did Mr. Taylor prepare this, Mr. Schneider?

The Witness: Yes, sir.

Mr. Griffin: I have no objection.

Mr. Keesling: I have no objection.

The Court: Is that A-67?

Mr. Cox: Yes, your Honor.

The Court: A-67 may be admitted, there being no objection. [3326]

(Defendants' Exhibit A-67 admitted in evidence.)

Q. (By Mr. Cox): Now, will you read to the Jury what it says there, Mr. Schneider, with respect to the ownership of stock in Renton Ice and Ice Cream Company?

A. Yes; it says, "R. J. Schneider, Issaquah, Washington, President, 6,000 shares; C. M. Baskett, Issaquah, Washington, Vice-President, 6,000 shares; L. H. Taylor, Seattle, Washington, Secretary-Treasurer, 6,000 shares."

Q. And you signed that statement, did you, Mr. Schneider? A. Yes.

Q. Before a Notary?

A. Apparently. That is a Notary seal on here.

The Clerk: Defendants' Exhibit A-68 marked for identification.

(Defendants' Exhibit A-68 marked for identification.)

Mr. Griffin: Let me see that a moment.

(Whereupon, Defendants' Exhibit A-67 was handed to Mr. Griffin by the witness.) [3327]

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Cox): Handing you, Mr. Schneider, what has been marked for identification as Defendants' Exhibit A-68, can you tell us what that is?

A. It is a similar sheet.

Q. Would that appear to be another report prepared for submission to the Federal Alcohol Administration?

A. To someone. At least, it was prepared.

Q. Is it in the same form with the same columns and sub-headings as appear on Defendants' Exhibit A-67?

Mr. Griffin: Objected to as immaterial.

Mr. Cox: It is preliminary, your Honor.

The Court: That speaks for itself. Are you asking identification now?

Mr. Cox: Yes, your Honor.

The Court: Well, does the witness recognize it, at all? Do you recognize that?

The Witness: Yes, I do.

The Court: What is it?

The Witness: It is a similar statement to his. There is more to it.

The Court: When you say "similar to this", similar to the first one shown here?

Mr. Cox: A-65. [3328]

The Witness: Submitted to the Alcohol Tax Unit. It is apparently for a similar purpose. There is much more information on it. It is signed but not notarized.

The Court: For the Renton Ice?

(Testimony of Raymond J. Schneider.)

The Witness: Yes, Renton Ice and Ice Cream Company.

Mr. Obenour: What is the date on it, please?

The Witness: The new one?

Mr. Obenour: Yes.

The Witness: The date? It says "22nd day of September, 1942."

Q. (By Mr. Cox): What is the date of A-67, Mr. Schneider?

A. 14th day of October, 1942.

Mr. Cox: We offer A-68 in evidence, if the Court please.

The Court: May I see them, Mr. Schneider?

(Whereupon, Exhibits were handed to the Court by Mr. Schneider.)

(Whereupon, there was a brief pause.)

Mr. Griffin: May I inquire, if the Court please? Who prepared Exhibit A-68, if you know?

The Witness: Mr. Taylor. [3329]

Mr. Griffin: I have no objection.

Mr. Obenour: We have no objection.

Mr. Keesling: No objection.

The Court: A-68 may be admitted.

(Defendants' Exhibit A-68 admitted in evidence.)

Q. (By Mr. Cox): Mr. Schneider, would you read to the Jury the distribution of ownership of shares of stock reflected on A-68?

A. Stockholders and directors are as follows: "R. J. Schneider, President, Director, 6,000 shares owned; C. M. Baskett, Vice-President, Director,

(Testimony of Raymond J. Schneider.)

6,000 shares owned; L. H. Taylor, Secretary-Treasurer, and Director, 10 shares owned; Hans Forster, stockholder only, 5,990 shares owned."

Q. Now, A-68, Mr. Schneider, you signed but it was not completed before a Notary; is that correct? A. That is correct.

Q. Is there anything on A-68 to indicate it was ever submitted to the Alcohol Tax Division?

A. I believe not. [3330]

Q. After Mr. Taylor had prepared Defendants' Exhibit A-68 and submitted it to you, did you request him to prepare Defendants' Exhibit A-67 in order to conceal the ownership in stock in Renton Ice and Ice Cream Company by Mr. Forster?

A. No.

Q. That was the effect of the change, wasn't it, Mr. Schneider?

A. Apparently it was, yes.

Mr. Cox: At this point, if it please the Court, I advise your Honor and Counsel that I will start cross-examining Mr. Schneider.

The Court: You mean you go into matters covered on the Government's case?

Mr. Cox: Yes. That completes the additional matter we wish to bring out through Mr. Schneider at this time.

The Court: I might advise the Jury that Mr. Schneider testified, as you recall, as part of the Government's case. Subsequent to his leaving the stand, Counsel for Mr. Taylor asked permission to inquire further on the matter that they were not

(Testimony of Raymond J. Schneider.)
advised of at the time they examined him earlier. The Court suggested that the examination be conducted as a part of their case, or, rather, at the time that they [3331] put their case in; so that at this time now the examination is as to matters that were testified to in connection with his examination when he testified as part of the Government's case.

Mr. Cox: Perhaps, your Honor, in view of the time, we might take a recess before we start on it.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess.

The Court calls your attention to the admonition given on similar occasions, and asks that you heed that admonition on this occasion.

(Whereupon, the Jury retired from the Courtroom.)

(Whereupon, at 2:45 o'clock p.m., a recess was had in the within-entitled and numbered cause until 3:00 o'clock p.m. April 6, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

Mr. LeSourd: If your Honor please, at this time we file requested instructions of the Defendant Taylor, an original and one copy. Is that what your Honor desires?

The Court: Yes. You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.) [3332]

It is stipulated that the Jury and all Defendants are present in the courtroom?

(Testimony of Raymond J. Schneider.)

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Cox.

Mr. Cox: Thank you, your Honor.

Q. (By Mr. Cox): Mr. Schneider, when you testified on behalf of the Government sometime in February of this year, you testified, did you not, regarding the addition of the figure "1" in front of nine figures listed in your accounts payable record which is in evidence here as Exhibit 212, did you not? A. Yes.

Q. Did you hear Mr. Eppler's testimony when he was on the stand? A. Some of it.

Q. Were you here at the time when, as I recall it, he testified that Mr. Brody had called these additions to his attention when he turned this report over to Mr. Eppler?

A. I believe I heard that.

Q. Isn't it true, Mr. Schneider, that you were the one who had originally called these figures to the attention of Mr. Brody? [3333]

A. It is possible.

Q. Isn't it true, Mr. Schneider, that you have previously stated that you did?

A. I am not sure.

Mr. Cox: Would you mark this, please?

The Clerk: Defendants' Exhibit A-69 marked for identification.

(Defendants' Exhibit A-69 marked for Identification.)

Q. (By Mr. Cox): Mr. Schneider, handing you

(Testimony of Raymond J. Schneider.)

what has been marked Defendants' Exhibit A-69 for identification, your testimony was taken, was it not, under oath before Mr. Eppler and Mr. Marx and a shorthand reporter in the presence of your attorney, Mr. John W. Dobson, April 11, 1951?

A. I would say so, yes.

Q. Handing you a transcript of that interview, and directing your attention to question No. 43, I ask you to refresh your recollection from that, and tell the Jury whether or not you have previously stated that it was you who called the alteration in the July, 1947 accounts payable record to the attention of Mr. Brody?

A. "In giving them to him, I called his [3334] attention to the alterations which seemed to be on the July, 1947, total."

Q. And the "him" referred to there is Mr. Brody, is that correct?

A. That is Mr. Brody, yes.

Q. Now, Mr. Schneider, as I recall your testimony on direct, you stated quite positively that you yourself saw Mr. Taylor insert these nine figure "1's" in front of nine figures which you had written into the accounts payable record for July, 1947?

A. Yes, that is right.

Q. Have you ever, prior to taking the stand in this case, made a contrary statement regarding the manner or way in which these alterations were made or in which they came to your attention?

A. I wouldn't be sure.

Q. You wouldn't be sure?

(Testimony of Raymond J. Schneider.)

A. That I did.

Q. Would you be sure that you didn't?

A. Not intentionally. That would have been my statement, right there, that I saw him do it.

Q. That would be your testimony now, that you saw him do it? A. Yes; yes, sir.

Q. Now, I will ask you, Mr. Schneider, if on [3335] this same occasion that we have referred to before, on April 11, 1951, your testimony was not taken in Room 1004-A, of this building, and you were present, Mr. John W. Dobson, your Attorney, was present, Mr. Eppler, and Mr. Marx were present, and Eleanor Anderson was present as recorder; do you remember that occasion?

A. Yes.

Q. And I will ask you, Mr. Schneider, if at that time, the following questions were not asked of you, and if you did not make the following answers:

Mr. Cox: And, if the Court please, I would like to read a series of questions and answers all relating to this question of the alterations allegedly made in the July, 1947 accounts payable record.

Mr. Griffin: I understand this is for impeachment?

Mr. Cox: Yes, sir.

Mr. Griffin: I object as incompetent, irrelevant and immaterial, and to a procedure that is eminently unfair. This witness was called by the Government, and now, for the purpose of impeachment on cross-examination, the Government has supplied Mr. Taylor's counsel with the transcript of that

(Testimony of Raymond J. Schneider.)

testimony for impeaching the Government's witness, and if they [3336] proceed on that basis, I will then be compelled to ask for a mis-trial as to Mr. Forster.

Mr. Cox: I am sure the Government in presenting Mr. Schneider presented him for the relation of such facts known to him and relevant to the case. They asked the questions and he gave the answers. He was vouched for by the Government to the extent that the Government sought to elicit, that is true, but that doesn't alter the fact that he may have made inconsistent statements at a prior time, or the fact that any defendant in this case adversely affected by his testimony should have free access to his record of prior statements.

The Court: In what respect Mr. Griffin, are you objecting?

Mr. Griffin: There is a common rule of law that when a party calls a witness, you vouch for the truth and veracity of that witness.

The Government called this witness and examined him as to these "1's" in that exhibit 212. I have never seen the document that counsel has before him now, supplied him by the Government, for the purpose of impeaching the Government's own witness as to the very items that they called him in chief upon.

Mr. Cox: The Government is not required to [3337] suppress evidence simply because they may have offered Mr. Schneider as a witness.

Mr. Moriarty: The Government at this time

(Testimony of Raymond J. Schneider.)

wishes to make the statement at this time that all statements of all defendants at any time have been available to all defendants, and the Court will recall that Mr. LeSourd demanded in open court the production of this document, which we did in response to your demand.

The Court: I don't believe that the Court can sustain the objection. I don't know whether the matter is impeaching, but——

Mr. Griffin (Interposing): I don't either, but I am simply stating, in fairness to the Court—it may or may not make any difference—my position, if it proceeds and turns out to be impeaching, that I would be bound to ask for a mis-trial.

Mr. Keesling: Before the questions are read and answers read, I would like to request that we be allowed to examine the questions and answers.

Mr. Cox: That is entirely agreeable.

Mr. Moriarty: Have you asked for the opportunity?

Mr. Keesling: No, this is the first time this came up. [3338]

The Court: Do you wish to read them now?

Mr. Keesling: Yes.

The Court: You may. May I take a look at the questions, first?

Mr. Cox: If the Court please, the questions we would like to direct your Honor's attention to are the questions 10 through 19, and 43 through 45.

(Whereupon, document was handed to the Court by Mr. Cox.)

(Testimony of Raymond J. Schneider.)

(Whereupon, there was a brief pause.)

Mr. Cox: I would state to the Court that in addition to these questions, there is one further matter not covered in the transcript of this interview which we believe, taken with the questions and answers here recorded, is impeaching and definitely casts reflection upon Mr. Schneider's credibility.

The Court: Is the first question or two there essential, Mr. Cox?

Mr. Cox: We feel the first one is, your Honor.

The Court: Where exception was taken by Counsel?

Mr. Cox: Yes.

(Whereupon, there was a brief pause.)

Mr. Keesling: If the Court please, with [3339] respect to these, the Defendant Erickson joins in the objection made by Mr. Griffin, and particularly in view of this, that the demand for this was just recently made from the Government, and for that reason, it amounts to the Government impeaching its own witness, because the only way that the Defendant, or Mr. LeSourd, could have known of any impeaching statements would be upon information of the Government, so that, in effect, the Defendant Erickson feels that this is impeaching of the Government's witness.

The Court: The Court will overrule the objection. You may proceed. There is a question about the first one. I don't believe that that—the only question here involved is, as I understand it, whether this witness testified that he saw Mr. Taylor

(Testimony of Raymond J. Schneider.)
make the changes in the "1's". That is the question involved?

Mr. Cox: That is the question we are getting to now. This entire colloquy related to that, directed to that month and that year, and the changes, if any, that were made at that time.

Mr. Moriarty: I don't think, if your Honor please, that this is impeaching to any questions that this witness has testified to on direct.

The Court: Well, Mr. Cox states that this [3340] taken together with some other material——

Mr. Cox (Interposing): Yes, your Honor.

The Court (Continuing): ——would constitute impeachment.

I will caution the Jury that this testimony here relates to what this witness may have said on another occasion. It goes solely to the credibility. It is permitted so that the Jury can determine whether this witness has said anything at any other time that would serve to raise any question as to whether or not you wish to believe him or what credulence you are going to give his testimony. It may or may not affect it, but it has no bearing on any other issue in the case at all.

Mr. Moriarty: May the record show that the Government objects to this as not impeachment?

The Court: Yes, the record will so show.

Mr. Cox: May I proceed?

Mr. Moriarty: My objection is made to each question. I have a motion to make when he is through.

(Testimony of Raymond J. Schneider.)

Mr. Keesling: We join in the objections of all counsel.

The Court: It is clear that all counsel are objecting, except Mr. Cox and Mr. LeSourd.

Mr. Cox: May I proceed, your Honor? [3341]

The Court: You may.

Q. (By Mr. Cox): At the time about which I questioned you a short time ago, Mr. Schneider, were you asked the following questions and did the colloquy indicated here take place, and did you give the answers which I will read:

"Question No. Ten: Describe the falsification in the corporation's accounts payable for the month of July, 1947.

"Attorney Dobbins: I object to the question by reason of the use of the word 'falsifications'. Do you want to ask him about the changes made?

"Mr. Eppler: I would rather say 'falsifications' and if he doesn't want to answer, that is all right."

Then there is a parenthetical statement here that his attorney has discussion with his client and then the answer.

The Court: That, I think, you might skip. That serves no purpose.

Mr. Cox: That conference or the answer?

The Court: That conference, conference with [3342] the attorney, and the next answer.

Mr. Cox: Your Honor wishes me to skip the next answer?

The Court: Yes.

(Testimony of Raymond J. Schneider.)

Mr. Cox: Well, we in turn would except to that portion of your Honor's ruling.

Mr. Griffin: Now, everybody objects.

Mr. Cox: Which makes it unanimous.

Q. (By Mr. Cox continuing):

"Question Number Eleven: Will you examine the accounts payable record for July, 1947, for the corporation and state whether or not any alterations have been made?

"Answer: Alterations, you said?

"Mr. Eppler: Yes.

"Mr. Schneider: There were alterations made on this page after I had made the entries."

Was that question asked you, and did you give that answer? A. I think so.

Mr. Moriarty: Objected to, not impeaching.

Mr. Cox: The single question is a part of the whole, and, taken alone, may not be.

Q. (By Mr. Cox): "Question Twelve: What were these alterations, Mr. Schneider?

"Answer: There are several instances where the figure 'I' was placed before my proper entry, and the total then made to include these amounts."

Was that question asked, and did you give that answer? A. I think so.

Mr. Cox: Now, if the Court please, and with the consent of counsel since they are objecting anyway, I would omit the next question, which was simply his recital of the accounts payable records which were altered, and they are the ones which Mr. Marx just testified to. If you prefer, I will read——

(Testimony of Raymond J. Schneider.)

Mr. Griffin: (Interposing) Don't assume any consent from me on this examination. I am objecting entirely.

Mr. Moriarty: We object.

Mr. Cox: We will read it, then. [3344]

Q. (By Mr. Cox): "Question Thirteen: Will you point out specifically which items these were? Give the date, the payee, and the amount you had entered.

"It appears to me that on the entry on July 15, to the Seattle Brewing Company, there is a '1' placed in front of the amount $886.40. Similarly, on July 18, a '1' placed in front of the item to Issaquah Creamery, which was originally $426. Similarly, on the 21st, Issaquah Creamery, a '1' placed in front of the original $274. Likewise, on the 22d, to Seattle Brewing, $886.40. A '1' had been placed before those figures.

On the 23d, exactly the same, a '1' placed before $886.40.

On the 25th, to Issaquah Creamery, a '1' placed before $448.50.

On the 29th, a '1' placed in front of the Issaquah Creamery, $585.50.

On the 28th, Seattle Brewing, a '1' placed ahead of $581.64; and on the 29th, Seattle Brewing, a '1' placed before $886.40, [3345] all of which were not in my handwriting, and not made by me."

Was that question asked you, and did you give that answer at that time? A. I think so.

Q. "Question Fourteen: Was there any basis in

(Testimony of Raymond J. Schneider.)

fact for adding $1,000 on each of these nine items?

"Answer: Not that I know of, as it was done by Mr. Taylor."

Was that question asked you, and did you give that answer? A. I would think so.

Q. "Question Fifteen: When these items were paid, were the amounts increased by the $1,000 items, or were the $1,000 items excluded from the amount paid to the account?

"Answer: I pay from the statement which would indicate the original figures, and not the additional $1,000 on each one, although I don't go back to this and make any check or verify it." [3346]

Were you asked that question, and did you give that answer? A. I think so.

Q. "Question Sixteen: Will you describe how it came to your knowledge that Mr. Taylor made these alterations?

"Answer: He had told me not to total the month's entries as he might want to make some adjustments. When he was through, I noticed the large total, and asked him how it came about, and how it would affect our books. His answer was that it was an adjustment which he would readjust later."

Were you asked that question, and did you give that answer? A. I think so.

Q. "Question Seventeen: Do you know whether or not he ever made a later adjustment?

"Answer: He never told me that he had, but I have reason to believe that he did. I don't believe that he told me that [3347] he did."

(Testimony of Raymond J. Schneider.)

Were you asked that question, and did you give that answer? A. I think so.

Q. "Question Eighteen: Did Mrs. Lovenger know of these alterations?

"Answer: I believe not."

Did you give that answer to that question?

A. I think so.

Q. "Question Nineteen: Have you ever discussed these or other alterations in the corporate records with Mrs. Lovenger?

"Answer: I believe not."

Did you give that answer to that question?

A. I think so.

Q. Turning to question forty-three: "How did the alterations in the accounts payable record first come to the attention of Mr. Taylor's attorney?"

Mr. Cox: I believe this has been covered, if the Court please, with reference to this conversation [3348] with Mr. Brody so that we will skip that.

Q. (By Mr. Cox): "Question Forty-four: Had you previously discussed these alterations with anyone other than Mr. Taylor?

"Answer: I had not in my memory. I never thought much about it."

Were you asked that question, and did you give that answer? A. I think so.

Q. "Question Forty-six: Will you comment on the fact that Mr. Forster——"

Forty-five, I am sorry.

"How did you happen to think about it the first time?

(Testimony of Raymond J. Schneider.)

"Answer: I am not sure. In running over the older book, which this was, it occurred to me, as we ran through it, that some such thing had taken place at some time."

Were you asked that question, and did you give that answer? [3349]

A. I believe so, if it is there.

Q. Now, Mr. Schneider, in addition to the interrogation——

Mr. Griffin: Just a moment, if the Court please. I stated definitely that I would have a motion to make. I do not have a motion to make, because I agree with the Government, these questions are not impeaching.

Mr. Keesling: I withdraw my objection.

Mr. Cox: Very well.

M. Moriarty: Now, I move that they be stricken. There is no impeachment indicated.

Mr. Cox: We have one further matter to go into.

Mr. Moriarty: This goes to the matter you are completed with?

Mr. Cox: No, I am not. The further item I would take up is related to this item.

Mr. Moriarty: Very well.

Q. (By Mr. Cox): Now, in addition to this statement, from which I have been reading, and in addition to another interview which you had with Mr. Eppler and Mr. Marx, March 2, 1951, isn't it true, Mr. Schneider, that shortly before you were called as a witness in this case, [3350] you were

(Testimony of Raymond J. Schneider.)

interviewed at some length by Mr. Obenour and Mr. Eppler in connection with your testimony?

A. On or about what time?

Q. That took place, I believe, February 2, 1954, beginning at 5:00 p.m. in this building?

A. I think so.

Q. And at that time, Mr. Obenour and Mr. Eppler were present? A. I think so.

Q. And you were asked, among other things, at that time, about alleged alterations of the accounts payable for Renton Ice and Ice Cream for July, 1947, were you not? A. I think so.

Mr. Keesling: If the Court please, may I inquire if this is a written transcript?

Mr. Cox: No.

Mr. Moriarty: Who was present?

Mr. Cox: Mr. Obenour and Mr. Eppler.

Mr. Moriarty: Anyone else?

Mr. Cox: No one else but the witness.

The Court: Is there a question pending?

Mr. Cox: I believe there is, your Honor.

Q. (By Mr. Cox): Isn't it true that at that time, Mr. [3351] Schneider, you were specifically asked whether you saw Mr. Taylor make the addition of these nine "1's" which were added to certain of the figures for July, 1947, and that at that time, your answer was that you weren't certain about it?

A. I recall in one of their interviews, and there was more than one, that I definitely stated that I was sure. I don't recall saying that I was not sure.

Q. You don't recall ever having stated to Mr.

(Testimony of Raymond J. Schneider.)

Obenour, and Mr. Eppler, that you were not certain that Mr. Taylor had made the addition of these figures in the accounts payable record for July, 1947?

A. I recall telling them I was certain. I don't recall telling them that I was not certain.

Mr. Cox: We have no further questions.

Mr. Moriarty: I renew my motion, if the Court please.

Mr. Cox: It would seem to me, your Honor, that the disposition of the motion should await the proof, if we can establish it, of the final concluding statement, which is clearly impeaching. It is directly contradictory.

The Court: In other words, you have more testimony in connection with this? [3352]

Mr. Cox: Yes. We cannot establish that by a written statement. It requires oral statements.

Mr. Moriarty: Other than that last question, that you have, your record is here in writing?

Mr. Cox: That is correct, Mr. Moriarty.

Mr. Moriarty: My motion is addressed to the matter other than the last question that was asked. Counsel has made the representation that he will support it.

The Court: Well, the Court will wait until the matter is finally presented, if you do have any further testimony.

The Court asks the Jury to bear in mind that all this last portion here may be considered impeach-

(Testimony of Raymond J. Schneider.)

ing, or may not be. The Court may strike it, so that, have in mind that it may be stricken.

Now, you have completed your cross-examination, Mr. Cox?

Mr. Cox: Yes, your Honor.

The Court: Have you any——

Mr. Moriarty: We will withhold our cross-examination, if your Honor please, awaiting the ruling.

The Court: Is there no cross-examination on the first portion?

Mr. Moriarty: No, your Honor. [3353]

The Court: You understand that the only portion which may be stricken was that which came in after recess?

Mr. Moriarty: Yes.

Cross Examination

Q. (By Mr. Griffin): With reference to A-67, this alcohol unit document, was that an application for beer; do you know?

A. It was an application for——

Q. (Interposing) Beer and wine?

A. A Federal License to handle beer and wine.

Q. You were inquired whether you signed this before a Notary. Will you tell the Jury precisely who gave you that document and what you did with it and the condition of it when you last saw it?

A. Well, as I recall, I was given this to sign.

Q. By whom?

A. By Mr. Taylor; and I believe there was a

(Testimony of Raymond J. Schneider.)

form for a Notary's acknowledgment, but I never saw the Notary, nor did I see the acknowledgment put on there.

Q. When Mr. Taylor gave it to you, did you sign it? A. Yes, sir. [3354]

Q. And did you give it back to Mr. Taylor?

A. Yes, sir.

Q. And do you even know the Notary's name? Excuse me.

(Whereupon, Mr. Griffin withdrew the document from the witness.)

Q. (Continuing) Which would apparently be—I am looking at the seal A.C. or A.G. Forrest. Do you know any such individual or person?

A. No, I do not.

Q. Then you did not sign the document in the presence of a Notary Public?

A. No, I did not.

Q. Now, with reference to both exhibits A-67 and A-68, so far as you know, did Mr. Forster ever see either one of those documents?

A. Not as far as I know.

Q. When—was there a time in the incorporation of the Renton Ice and Ice Cream Company, on this Mr. Forster's becoming interested, that Mr. Taylor held the stock of both yourself, Mr. Baskett, and Mr. Forster? A. Oh, yes.

Q. With reference to A-68, which is also signed by you—correct? A. Yes. [3355]

Q. But the Notary line is left blank?

A. Yes.

(Testimony of Raymond J. Schneider.)

Q. Made out to be signed, however, the 22d day of September, 1942, is that correct?

A. That is correct.

Q. And this was also prepared by Mr. Taylor, is that correct? A. Yes, sir.

Q. I will ask you if it isn't a fact that as of September 22, 1942, the stock book in evidence of the Renton Ice and Ice Cream Company, exhibit A-7, shows no stock issued or standing in the name of Hans Forster on September 22, 1942?

A. September 22nd?

Q. September 22nd.

A. No, there isn't.

Q. I will ask you if it is not a fact that the stock book of the Renton Ice and Ice Cream Company, Exhibit A-7, shows the first issuance of stock to Hans Forster on September 23, 1942?

A. That is correct.

Q. In whose handwriting are those entries, if you know?

Mr. Moriarty: Is he qualified, Mr. Griffin?

Mr. Griffin: I am not a witness. I just asked [3356] if he knew. I don't know whether he does or not.

A. It looks like Mr. Taylor's.

Q. (By Mr. Griffin): And there is no receipt for the delivery of that stock certificate as shown in the stock book, is there?

A. No, there isn't.

Q. Do you know, or do you have any idea, when that stock was delivered to Mr. Forster?

(Testimony of Raymond J. Schneider.)

A. No, I don't.

Q. The Articles of Incorporation——

Mr. Griffin: If the Court please, the Secretary of State's copy fell out of this exhibit as I was using it. I don't know whether they were a part of the exhibit or not. They just fell out as I handed the exhibit to the witness. It is unimportant but I just want to account for it.

The Court: For its being there?

Mr. Griffin: For its being there; and I now have a document in my hand, unmarked. I am perfectly willing to stipulate it may be part of Exhibit A-7.

Mr. Cox: All right.

The Court: It is a certificate that Articles have been filed?

Mr. Griffin: Yes, showing filing of the [3357] Articles with the Secretary of State, August 15, 1938. Strike all of what I have said. This is the Trustee's certificate of the Renton Ice and Ice Cream Company, August 17, 1938. I don't see that it has any connection.

Mr. Moriarty: We suggest the exhibit be withdrawn, and returned to the party who first exhibited A-7.

The Court: All right; the exhibit may be withdrawn as not properly a part of the exhibit.

Mr. Griffin: Yes, your Honor.

The Court: I mean the certificate.

Q. (By Mr. Griffin continuing): After you signed and delivered these Alcohol—these permits, or applications,—to Mr. Taylor of the Alcohol Tax

(Testimony of Raymond J. Schneider.)

Unit, did you have anything further to do with them from that time?

A. Not that I know of; I have a copy of one somewhere in my files, but other than that, no.

Q. Do you even know which one was filed?

A. No, I wouldn't have, no, until I saw the stamp on there.

Mr. Griffin: That is all. I think I should reserve on this other issue on which you Honor [3358] is withholding ruling.

The Court: Yes. I am withholding ruling until there is further testimony, as Mr. Cox indicated.

Mr. Griffin: Yes, your Honor.

The Court: So that Mr. Schneider will have to be available.

Cross Examination

Q. (By Mr. Keesling): Mr. Schneider, showing you Exhibit 212 for the month of July, 1947, and referring to these nine "1's", that were placed in the thousand category in front of various accounts payable in that July 1947 period——

A. (Interposing) Yes.

Q. (Continuing) ——Mr. Cox—in answer to Mr. Cox's questions, your testimony was that, or at least in his question he stated that, in an unrecorded conference with Mr. Obenour, you might have said that you were not sure you saw Mr. Taylor enter those.

At this time, did you see, or did you not see Mr. Taylor enter those nine one-thousand dollar figures?

A. I saw him.

(Testimony of Raymond J. Schneider.)

Q. Are you sure of that? [3359]

A. Yes, I am sure of that.

Mr. Keesling: No further questions.

Mr. Moriarty: We have reserved ours.

The Court: Any redirect?

Mr. Cox: Yes, your Honor.

The Court: This only goes——

Mr. Griffin: (Interposing) I think before that I should have one question.

Cross Examination

Q. (By Mr. Griffin): With reference to Exhibit 212, in whose handwriting is the total, eighteen thousand—what is it? A. $253.11.

Q. $253.11. A. Yes.

Q. In whose handwriting is that?

A. That is Mr. Taylor's.

Q. And in whose handwriting is the second item, $18,277.36? A. That is mine.

Q. And in whose handwriting are the words "liquid carbonic," is it $24.25?

A. That is mine.

Q. That is yours; now, so that the Jury may see what we were referring to on this Exhibit 212, just turn [3360] this way, Mr. Schneider.

The first total here, $18,253.11, you say is Mr. Taylor's handwriting? A. Yes.

Q. And you added the sub of $24.25?

A. Yes, sir.

Q. And added that to Mr. Taylor's figure?

A. Yes, sir.

(Testimony of Raymond J. Schneider.)

Mr. Griffin: That is all.

Redirect Examination

Q. (By Mr. Cox): Mr. Schneider, handing you again Defendants' Exhibit A-67, the application for beer license, dated October 14, 1942, isn't it a fact that you actually signed that document in Mr. Taylor's office in the presence of Mr. Forrest, the Notary named thereon? A. No.

Q. You have a definite recollection that you signed it somewhere else?

A. I have a definite recollection of never meeting or knowing Mr. Forrest.

Q. Aside from knowing him, did you ever sign a document in Mr. Taylor's office in the presence of a Notary, whether you knew him or not?

A. I don't recall that I did. [3361]

Q. Do you have a definite recollection that you never did? A. No.

Q. You testified, I believe, in answer to a question by Mr. Griffin, that there was a time when Mr. Taylor held all the stock in this company?

A. I think that is right. I never had mine delivered to me for two or three or four years.

Q. By that, you mean the actual certificates evidencing ownership of stock in the corporation had not been physically delivered to you?

A. That is right.

Q. During this entire period, however, Mr. Schneider, did you and Mr. Baskett, and later, Mrs.

(Testimony of Raymond J. Schneider.)

Baskett, and Mr. Forster act as stockholders of the Renton Ice and Ice Cream Company?

A. Yes, sir.

Q. Had you and Mr. Baskett and Mr. Forster paid the six thousand dollars apiece which you invested in the stock of the Renton Ice and Ice Cream Company, in that corporation?

A. I did, I know.

Q. And Mr. Forster?

A. I would think so.

Q. And Mr. Baskett? [3362]

A. Yes.

Q. As a matter of fact, haven't you testified that all but two thousand dollars of that amount was required for the down payment made to Mr. Williams? A. Yes.

Q. And that was made at the inception of this corporation: is that correct? A. Yes.

Q. Would you say, therefore, Mr. Schneider, that on September 22, 1942, Mr. Forster had subscribed and paid for his stock, regardless of whether or not the certificate had actually been issued to him? A. Supposedly he did.

Q. Supposedly he did?

A. Yes, as far as I knew.

Q. Then, on both of the dates here in question, both September 22, 1942, and October 14, 1942—those being the dates respectively of Defendants' A-68 and A-67,—Mr. Forster had subscribed and paid for six thousand shares of the capital stock of

(Testimony of Raymond J. Schneider.)

the Renton Ice and Ice Cream Company, did he not?

Mr. Keesling: If the Court please, if this is his witness, it is leading.

The Court: The last portion makes it leading, Counsel. Will you restate the question? [3363]

Mr. Cox: Yes, I will.

Q. (By Mr. Cox continuing): Mr. Schneider, had Mr. Forster subscribed and paid for his stock in the Renton Ice and Ice Cream Company to the best of your recollection prior to September 22, 1942? A. I thought so.

Mr. Cox: That is all.

Recross Examination

Q. (By Mr. Griffin): And did the Secretary-Treasurer, Mr. Hicks Taylor, take care of all those matters? A. Yes, sir.

Mr. Griffin: That is all.

Mr. Moriarty: No questions.

The Court: Mr. Schneider, if you will remain subject to call, it may be necessary for you to come back, if there is some further cross-examination. You expect to be in town, do you?

The Witness: Yes, in Renton.

The Court: When do you expect to have your other testimony, Mr. LeSourd?

Mr. LeSourd: It will probably be, I imagine, toward the end of the week, your Honor, or the first of next week. [3364]

(Testimony of Raymond J. Schneider.)

The Court: Then we wouldn't be in a position to act upon this matter for a day or two?

Mr. LeSourd: If your Honor wishes us to take that out of step, we have other testimony from the same witness, and we could call him at that time.

The Court: The matter is fresh in our minds now.

Mr. LeSourd: All right. Then, if you will step down now, we are through for this moment, at least.

(Witness excused.) [3365]

* * * * *

L. HICKS TAYLOR

upon being called as a witness for and on behalf of the Defendant Taylor, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. LeSourd): You are L. Hicks Taylor, one of the Defendants in this case?

A. I am.

Q. Where were you born, Mr. Taylor?

A. I am a native son of Seattle.

Q. What is your age?

A. I am 63 years of age.

Q. What is the fact as to whether you have lived in this community all of your life?

A. I have lived my entire life in Seattle.

Q. Are you married? A. I am.

Q. Where do you and your wife reside?

A. At 511 West Mercer Place, Seattle, Washington.

(Testimony of L. Hicks Taylor.)

Q. Mr. Taylor, what was the economic situation in your family when you were growing up?

A. It was necessary for me to support myself at a rather young age. [3494]

Q. At what time did you leave school? ..

A. I left school in my Sophomore year in High School.

Q. And did you go to work at that time?

A. I did.

Q. Did you complete your high school education?

A. Through night school, I obtained considerable more education.

Q. Did you ever get your high school diploma?

A. I did not.

Q. Did you take any accounting education?

A. Yes.

Q. What accounting education have you had?

A. I attended the University Extension three semesters under Professor McConaghey.

Q. Did you have any other accounting education?

A. I have an accounting degree from LaSalle University.

Q. Is that an attendance course or an extension course? A. It is an extension course.

Q. Mr. Taylor, when did you first go into practice for yourself in the bookkeeping or accounting field? A. In 1919. [3495]

Q. And what was the nature of your work at that time? A. Bookkeeping service.

(Testimony of L. Hicks Taylor.)

Q. Was that here in Seattle? A. Yes.

Q. When were you licensed as a public accountant? A. Early in 1934.

Q. And under what name have you practised public accounting?

A. L. Hicks Taylor and Company.

Q. At what location have you had your office?

A. At several locations.

Q. Are they all here in Seattle?

A. All downtown Seattle.

Q. Where was your office in the years involved in this case, 1945 through 1949?

A. In the Textile Tower, at Seventh and Olive Way.

Q. Since you were licensed as a public accountant, Mr. Taylor, to what extent have you devoted your time to your practice?

A. Continuously.

Q. Part-time or full time?

A. Full time. [3496]

Q. In your practice, have you developed any particular type of clientele? A. Yes.

Q. What type of clientele did you develop?

A. The greatest portion of my clientele are on a monthly fee basis.

Q. What was their nature with respect to whether they were a large business or a small business?

A. The greater portion of my practice was of the smaller type of business.

Q. What was their nature with respect to

(Testimony of L. Hicks Taylor.)

whether they were closely held businesses or widely held businesses?

A. In most cases, they were individual proprietorships, or small corporations with few stockholders.

Q. Would you give us, in general terms, the scope of work that you did during the years here involved, 1945 to 1949, for your typical clients?

A. In a majority of cases, we maintained the general ledger, installing what we call a balancing cash journal. It is a fairly informative book, and is completed by the bookkeeping force in the organization that you operate for. It is all completed and [3497] presented to our office, or to me, to keep in the general ledger.

Q. Now, in addition to the cash balancing journal that you mentioned, what type of bookkeeping records, if any, were set up for your ordinary type of client?

A. Most clients must have a sales register. They may have a check register or a combination cash journal which embodies a check register and cash receipts. Sales are generally handled through some type of a sales register, or maybe combined, associated and posted to this cash balancing journal.

Q. Were accounts payable records also set up?

A. Accounts payable records are kept by different ones in different ways.

Some pay from invoices and statements. Some maintain a book or an accounts payable journal, and post all their bills and items to that, and totals

(Testimony of L. Hicks Taylor.)

are taken from that to the balancing cash journal.

Many clients have an accounts payable journal column in the cash journal, and post all their statements and invoices directly to this cash journal and make their distribution there.

Q. To what extent, Mr. Taylor, in your practice, did you keep books of account yourself for clients other than the general ledger? [3498]

A. Not to any great extent. I have kept the entire records of some companies, but not large ones.

Q. To what extent did your client supply the figures to you for inclusion in the ledger?

A. In most cases, all the figures are furnished to us. We do not audit.

Q. You spoke of "you do not audit"; you mean, you never make an audit?

A. That is a little too broad. I have made a few audits in my practice, but it is not my regular practice. The time element of an audit many times takes anywhere from a week, sometimes two weeks. In our work of individual clients on a monthly basis, we do not have the time to take on an audit of any size.

Q. Now, in that connection, Mr. Taylor, have you ever referred to yourself as an auditor?

A. I am afraid that I have, in a general way, as an auditor and accountant.

Q. We have heard lots of testimony here in which sometimes the word "auditor" is used, and

(Testimony of L. Hicks Taylor.)

sometimes the word "accountant," but what is the fact as to the use of those two words, generally?

A. Well, it is a matter of statements sometimes that tie the two together. As a rule, we refer to ourselves as accountants, and not as auditors.

Q. But you have used both terms interchangeably? A. I have done that.

Q. Now, referring to Mr. Forster's enterprises in the years here in question, 1945 to 1949, did you make audits of those enterprises?

A. I did not.

Q. Have you been able, during the years of your practice, were you able to handle all of the accounting business you developed? A. I have not.

Q. Were other accountants associated with you?

A. I have had from one to four at different times.

Q. How about in the years 1945 to 1949?

A. I had three most of that period.

Q. Now, you mentioned clients on a monthly fee basis. To what extent was your practice devoted to that type of practice?

A. I would say in most cases it would be very limited, those that were not that way.

Q. Did you have clients for whom you merely prepared the income tax return?

A. Yes, a few. [3500]

Q. Now, referring to the years 1945 to 1949, did you receive retainers from monthly clients during that period? A. Yes.

Q. Approximately how many clients, Mr. Tay-

(Testimony of L. Hicks Taylor.)

lor, did you have in that period on a monthly retainer basis?

A. Probably from 20 to 30, probably.

Q. Now, during those same years—excuse me, you mean—do you mean by that that you would have that many at any one time? A. Yes.

Q. During those same years, what would be your estimate of the number of persons or corporations for whom you merely prepared the tax returns without being on a monthly basis?

A. It would not be very many, probably 20 or 25.

Q. Did the Second World War have any effect on your practice, Mr. Taylor?

A. A very noticeable effect.

Q. What was that effect?

A. Well, it practically kept me working all of my waking hours, the demands were so great.

Q. How long did this pressure of work continue? [3501] A. Until 1950.

Q. What hours did you work during this period?

A. Well, they were pretty long. I don't believe I could estimate. They were longer than an eight-hour day, very much.

Q. Do you belong to any professional organizations? A. Yes.

Q. What were they?

A. I was a member of the first Seattle Association of Public Accountants, and I believe, its Third President. Then they were converted into the Se-

(Testimony of L. Hicks Taylor.)

attle and Washington State Association of Licensed Public Accountants, and I held the presidency of the City Association twice, and with the Washington State Association twice.

Q. Mr. Taylor, when did you first meet Mr. Forster?

A. As I recollect, it was around 1928.

Q. What were the circumstances?

A. Mr. Peters had employed me to do some work on the Issaquah Creamery.

Q. And you met Mr. Forster at that time? Did you?

A. Through Mr. Peters, I met Mr. Forster, yes. [3502]

Q. When did you—when did you commence regular accounting work for Issaquah Creamery Company? A. I believe, in 1928.

Q. Did Mr. Forster thereafter acquire an interest?

A. Mr. Forster acquired 49 percent interest in the Issaquah Creamery Company, Incorporated, from Mr. Peters.

Q. Did Mr. Forster thereafter acquire a greater interest?

A. At a later date, as I recollect, it was 1931 or 1932, he signed a contract to purchase the balance of the shares from Mr. Peters.

Q. Now, speaking of that time, 1931 and 1932, what was the size of the Issaquah Creamery Company?

A. It was a very small organization.

(Testimony of L. Hicks Taylor.)

Q. Was Alpine Dairy Milk distribution a part of it at that time?

A. It did not come into existence until 1931 or '2.

Q. And when it came into existence, was it a separate organization, or was it a part of the Issaquah Creamery?

A. It was a retail distribution of the Issaquah Creamery Company. [3503]

Mr. LeSourd: Your Honor, I think it is time for recess.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions, and asks that you heed it on this occasion.

(Whereupon, the Jury retired from the Courtroom.) [3504]

* * * * *

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Q. (By Mr. LeSourd): Mr. Taylor, did you at some time start receiving compensation from Issaquah Creamery Company at the rate of $100 per month? A. Yes.

Q. About when was that?

A. To the best of my recollection, about 1935.

(Testimony of L. Hicks Taylor.)

Q. And did the Issaquah Creamery Company, from whom you received that compensation then include both the Issaquah Creamery Company and the Alpine Dairy business?

A. It included both, yes.

Q. To what extent did these businesses grow in the late 1930's?

A. My approximate recollection, to approximate one million to two million dollars a year in sales.

Q. There has been—you are testifying there as to the late '30s, prior to the '40s? [3512]

A. Yes.

Mr. Moriarty: I didn't get his answer.

Mr. LeSourd: One to two million.

Mr. Moriarty: Two or to that?

Q. (By Mr. LeSourd): It grew to that?

A. One to two million dollars, yes.

Q. There has been testimony here concerning a trip Mr. Forster took to Switzerland in 1939. Did he make any arrangements with you for the period while he was to be away? A. Yes, he did.

Q. What did you do during this period other than the duties you normally carried on?

A. At that time, I was the other party able to sign on the Issaquah Creamery bank account at the Washington State Bank. Mr. Forster did not desire to have someone else sign, and requested that I go to Issaquah and sign checks during that period.

Q. Did you make a trip to Issaquah?

A. I made trips two or three times a week.

(Testimony of L. Hicks Taylor.)

Q. Did you receive extra compensation for this service?

A. Yes, I received $300 when I returned.

Q. Who was in charge of the plant at Issaquah during [3513] this period?

A. My recollection is that it was Mr. Krumbah.

Q. And who was in charge of the office at Issaquah during this period? A. Mr. Erickson.

Q. Now, what, if any—there has been testimony concerning another trip to Switzerland by Mr. Forster in 1947. What, if any, arrangements did he make with you for extra services at that time?

A. None whatever.

Q. What, if anything, did you do at that time outside of your normal duties?

A. To the best of my memory, the jobbers at Alpine placed a little pressure on Mr. James Ross, who was the sales manager, and acting manager, and I believe we had one meeting relative to that during his trip.

Q. Did you perform any other duties during that period of time, outside of your normal duties?

A. Not to my recollection.

Q. Were you paid anything extra during this 1947 trip? A. I was not.

Q. Now, the testimony here, Mr. Taylor, shows that during the period here involved, 1945 through 1949, [3514] Alpine Dairy was a sole proprietorship of Mr. Forster. When was it split off from Issaquah Creamery Company? A. In 1940.

(Testimony of L. Hicks Taylor.)

Q. Under whose advice and direction was this split off accomplished?

A. To the best of my recollection, Mr. Beadon Hall had discussed it with Mr. Forster, relative to quite a definite change in the tax returns of a corporation. Mr. Hall's idea was to disincorporate the Issaquah Creamery——

Mr. Griffin: If the Court please, this is objected to as hearsay, unless this witness was present and so far, it is not disclosed, and I move the answer be stricken. If he was present at such a conversation, I have no objection.

Q. (By Mr. LeSourd): Mr. Taylor, confine yourself to not what other people have stated, but as to facts.

Under whose direction was this split off accomplished?

The Court: Are you asking that a portion be stricken?

Mr. Griffin: Yes.

The Court: Was any portion of your testimony with respect to what Mr. Beadon Hall said, [3515] was that made in your presence?

The Witness: That was made in my presence, yes.

The Court: Do you wish a time?

Mr. Griffin: It is still hearsay unless made in the presence of Mr. Forster. If it was, I have no objection.

Mr. LeSourd: Well——

(Testimony of L. Hicks Taylor.)

The Court: (Interposing) Do you wish to go into it?

Mr. LeSourd: No, we don't wish to go into it, your Honor..

The Court: Any portion of the answer that is hearsay, any statement made to this witness outside the presence of Mr. Forster, may be considered hearsay and stricken.

Q. (By Mr. LeSourd continuing): Mr. Taylor, can you tell us, if you know, any facts in your knowledge as to under whose advice and direction this split-off was accomplished?

A. The final and closing working over it was done by Mr. Harry Jones of Jones and Bronson, attorneys in the Colman Building.

Q. Did this split-off entail extra accounting work [3516] for you? A. It did.

Q. Did you perform that work?

A. I did.

Q. Did you receive extra compensation for it?

A. I did not.

Q. What effect, if any, did this split-off have on the amount of regular monthly work involved in the accounting for these businesses?

A. It increased my work, quite naturally.

Q. What effect did it have in the preparation of tax returns?

A. It required me to make additional tax returns. In the case of Alpine Dairy, it was necessary to make up the detailed statement for Mr. Forster's

(Testimony of L. Hicks Taylor.)

personal return besides making the corporate return.

Q. Did you at the time when these businesses were split off, have any discussions with Mr. Forster relative to compensation? A. I did.

Q. And what was said at that time?

A. I told Mr. Forster that I expected an increase, and that the detail of the ledger work was increased. [3517] Mr. Forster felt that Mr. Erickson could take on a bigger portion——

Mr. Griffin: (Interposing) Just a moment. I have no objection to the witness testifying as to what Mr. Forster said. As to what Mr. Forster felt is something different.

A. (Continuing) Mr. Forster said that Mr. Erickson could take over more of the duties, could take over the reconciliation of the bank account, the accounts payable control, the accounts receivable control, and could turn the journals over to me in a completed fashion, that I could post to the ledger and he did not care to increase my compensation.

Q. (By Mr. LeSourd): What fees did you receive thereafter from these businesses?

A. Just the same, only now divided, fifty dollars on each account.

Q. What fees did you receive from these businesses in the period 1945 to 1949?

A. The same amount.

Q. Did these businesses pay some of your ex-

(Testimony of L. Hicks Taylor.)

penses at the Washington Athletic Club in 1945 to 1949? A. I believe that they did. [3518]

Q. How much did that amount to?

A. In the four years, probably three or four hundred dollars.

Q. During this period 1945 to 1949, who was in charge of the books at Issaquah Creamery Company? A. Mr. Erickson.

Q. What assistance did he have?

A. As I recall, he had three people in the office with him.

Q. How often did you go out to Issaquah on accounting work for Issaquah Creamery Company and Alpine Dairy? A. Once a month.

Q. How long were you at Issaquah usually on these trips? A. The whole day.

Q. Did you stop by Issaquah Creamery Company at other times during the month?

A. It is possible that I have stopped by now and then, not often.

Q. How often would you think?

A. Well, probably once a month; maybe twice.

Q. What would be the nature of those visits?

A. Usually just passing of time of day or buying some ice cream or butter. [3519]

Q. Now, on the—then, insofar as actual accounting work, is it your testimony that you were there just once a month? A. Once a month, yes.

Q. Now, on these monthly visits, would you describe, Mr. Taylor, just exactly what you did?

A. The journals were always completed, and

(Testimony of L. Hicks Taylor.)

they were placed on a desk in the outer office, and I was in a position to start work right away. Mr. Erickson's work was always complete, and I would take the ledger and commence to post the journals that Mr. Erickson had completed.

Q. Now, just what information did you receive, and in what form did you receive it?

A. The journals were in balance, and Mr. Erickson would prepare me information slips on adding machine tapes, and various smaller paper which would be placed in the ledger for my use.

Q. Referring you to Defendants' Exhibit A-16, I will ask you what this is, with reference to your testimony, this last statement?

A. I am looking at Defendants' Exhibit A-16 which has the distribution of sundries, debit and credit, the distribution of the miscellaneous, or expense and purchase column, and an inventory as of [3520] August 31, 1948, for the Issaquah Creamery Company.

I am now looking at the distribution of the miscellaneous column, or the purchasing and expense column, and a sundries column of the Alpine Dairy.

This, combined with the footings across the journal were posted to my ledger to take off a trial balance.

Q. Now, handing you Plaintiff's Exhibit 249, the cash balancing journal of Alpine Dairy, opened at the last page of a series of sheets for August, 1946, I will ask you whether the footings on that page are the footings that you are referring to?

(Testimony of L. Hicks Taylor.)

A. That is correct.

Q. Would you hold those up so that the Jury can see them, Mr. Taylor?

(Whereupon, the witness complied with the request.)

Q. (Continuing) Now, there are some checkmarks above those footings. Would you tell us what those checkmarks are?

A. Those were my checkmarks when I posted the journal to the ledger.

Mr. Keesling: What was the date?

Mr. LeSourd: The last page for August, 1946, of [3521] the Alpine Dairy.

Mr. Moriarty: Nineteen——

Mr. LeSourd: (Interposing) August of 1946.

Q. (By Mr. LeSourd): Now, was this method of securing information from Mr. Erickson's journals the same for both Alpine and Issaquah Creamery? A. That is correct.

Q. What records did Mr. Erickson keep for Alpine Dairy?

A. The Alpine Dairy operating department was in Seattle.

Q. Yes, what records did Mr.——

A. (Interposing) Mr. Erickson retained—maintained the journal at Issaquah, which handled the accounts payable, the check register, the payroll accounts.

Q. Now, after entering these figures that you have secured from these tapes and journals in your general ledger, what did you do?

(Testimony of L. Hicks Taylor.)

A. I took off a trial balance on a work sheet.

Q. What is the nature of a trial balance?

A. That is the balancing figure taken from the debits and the credits from the ledger after the posting [3522] of these figures to the ledger.

Q. When you say "these figures," you are referring to——

A. (Interposing) I am referring to Exhibit A-16.

Q. And after getting up trial balances that would be a separate trial balance for each of these businesses? A. That is correct.

Q. What did you do then?

A. I prepared a profit and loss and a balance sheet on my work sheets.

Q. That would be the type of work sheets that had been introduced here in evidence?

A. That is correct.

Q. Now, you are still at Issaquah working. You are doing this at Issaquah?

A. That is correct.

Q. And when you prepared your work sheets with the profit and loss and balance sheet, what did you do with that?

A. Most times, when I was there, Mr. Forster would be there, and we would step into his private office and discuss the profit and loss statement for the period.

Q. Did you make any practice to go to Issaquah [3523] on any particular day of the week?

A. It was Mr. Forster's desire that I be there

(Testimony of L. Hicks Taylor.)

the day that he could be out there, usually on a Saturday or a Wednesday.

Q. Now, would you state what the nature of these figures that you received on the adding machine tapes, like A-16, and from the footings in the journal are with reference to whether they are total summary figures, or whether they are broken down and disclose all of the various business transactions of the company?

A. I am looking at Exhibit A-16. One of these adding machine tapes is postings, or the summary, from a sundries column in the journal. The debits read this way:

"Pay checks, $10,540.92; milk checks, $83,660.64; equipment, Ford truck, $4,558.56."

At the right of the column, it gives the account number; of the paychecks, 105; milk checks, 106; equipment, Ford truck, 109.

Q. Now, with regard to the other column, column of expenses, would you likewise indicate what the nature of those items are?

A. I am still reading from A-16, the expenses and miscellaneous column from the Issaquah Creamery journal. [3524]

Q. Yes, would you read some of those items, Mr. Taylor?

A. The expense accounts are all numbered. On No. 1 is milk. Would you like the amounts?

Q. Yes, please.

A. Milk, $128,426.53; No. 2 is Cream, $11,667.52;

(Testimony of L. Hicks Taylor.)

No. 3 is Butter, $31,409.55; Miscellaneous, No. 9, $64,263.91.

Q. I think that is enough.

Now, that No. 9, Miscellaneous, is that the account that has been testified here so much?

A. That is correct.

Q. And you got that in one figure as shown there?

A. It was one figure in the amount of $64,263.91.

Q. Now, when you discussed these tentative profit and loss figures from your work sheet with Mr. Forster on your visit to Issaquah, what, if any, familiarity did it appear to you that Mr. Forster and Mr. Erickson already had of the profit for the month?

Mr. Griffin: Object to the form of the question.

The Court: Objection sustained. [3525]

Q. (By Mr. LeSourd): Did you discuss these profit and loss figures with Mr. Forster and Mr. Erickson usually? A. Yes, we did.

Q. Did they exhibit at that time any familiarity with what the profit and loss figures might be?

Mr. Griffin: Object to the form of the question, and it is leading.

Mr. LeSourd: Just a moment, Mr. Taylor.

The Court: I think——

Mr. Griffin: (Interposing) It is calling for a conclusion.

The Court: I think it is objectionable in form, Mr. LeSourd.

Mr. LeSourd: Well, your Honor, my first ques-

(Testimony of L. Hicks Taylor.)

tion was not leading. What, if any, familiarity, they did exhibit, and I think that is perfectly proper.

Mr. Griffin: What was said.

Mr. LeSourd: All right, I will rephrase it again, your Honor.

Q. (By Mr. LeSourd): Mr. Forster—excuse me, Mr. Taylor, in these conferences with Mr. Forster, was anything said by Mr. Forster or Mr. Erickson which indicated to you that they had any familiarity already with what the profit should be for [3526] the month?

Mr. Keesling: I object to it as leading.

Mr. Griffin: I think the form of that question is objectionable. I have no objection to any question as to what was said, so far as Mr. Forster was concerned.

The Court: The first question here is, if anything was said.

Mr. LeSourd: That is right.

The Court: Objection overruled. "Yes" or "no," Mr. Taylor. A. Yes.

Q. (By Mr. LeSourd): And what was that?

Mr. Griffin: Just a moment. I am objecting to anything said by Mr. Erickson unless in the presence of Mr. Forster. I have no objection to anything he will testify as to what Mr. Forster said to Mr. Taylor.

The Court: If there is anything said here, and if both were not present, I take it it would be admitted only as to the one present?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Yes.

The Court: So that you may want to distinguish if there was anything said with one present, or otherwise? [3527]

Mr. LeSourd: Yes. May I ask a preliminary question to that?

Q. (By Mr. LeSourd continuing): In these conferences, monthly, we are speaking of, who was present? A. Mr. Forster and Mr. Erickson.

Q. Were they always both there?

A. Not always, no.

Q. What was the usual situation?

A. Usually, they both participated.

Q. Now, would you state if anything was said by these gentlemen, and indicate whether or not they were both present at such time, if you can recall any particular thing along that line?

A. The work sheet generally showed the profit accumulated for the period, and a deduction of the previous month's profit to show the profit for the month, and usually that was commented on during the session.

Q. Was there any statement which indicated that there was already a perception of what the profits would be?

Mr. Griffin: Objected to as leading. Object to the form of the question. It calls for a conclusion. The witness answered the specific question. [3528]

The Court: Objection sustained.

Q. (By Mr. LeSourd continuing): Was there anything in the bookkeeping system at Issaquah,

(Testimony of L. Hicks Taylor.)

Mr. Taylor, that would make it possible for a person to have worked out rough profit figures before you came out? A. Yes. They—that——

Q. (Interposing) What was it?

A. That is the purpose of the journal installed. The journal has a sales column, and, referring to A-16, the expense and miscellaneous and purchase columns, which can be applied to the sales, and then determine the difference. Then, if an inventory variance exists, it can be added or subtracted from that amount to determine the profit for that particular month.

Q. Well, is it in the nature of the cash balancing journal that this possibility exists?

A. Yes.

Q. Now, after your day at Issaquah, did you do anything further that month with regard to the financial statements of Alpine Dairy and Issaquah Creamery Company?

A. Yes, I took my ledger and work sheets to my office and re-checked them, and then prepared a typed profit and loss and balance sheet for both companies [3529] and mailed them to Mr. Forster.

Q. And, at the end of the year, did you perform any additional services?

A. The end of the year——

Q. (Interposing) With respect to tax returns?

A. Yes, I prepared the profit and loss statement and balance sheets for the tax returns, and prepared them at a later time.

Q. From what information, Mr. Taylor, did you

(Testimony of L. Hicks Taylor.)

prepare the Issaquah Creamery Company tax returns? A. From the general ledger.

Q. And from what information did you prepare the Alpine Dairy portion of Mr. Forster's tax returns? A. From the general ledger.

Q. Were you an officer of the Issaquah Creamery Company?

A. I was secretary, appointed by Mr. Peters, before Mr. Forster became associated with it.

Q. Did you receive any additional compensation for being an officer? A. I did not.

Q. Now, other than the accounting and preparation for the tax returns, did you perform other services for Mr. Forster or the Issaquah Creamery Company?

A. Yes, I was called on to perform various things, especially the income tax, capital stock tax, returns, [3530] excise tax returns, Department of Commerce reports, audits of insurance policies, audits of payroll records, audits of the Excise Division of the State Tax Commission, audits of the Internal Revenue, many interviews with people that Mr. Forster would send to my office, and interviews towards buying equipment for the offices, many times relative to his personal life insurance he would send people, and many others, and many telephone calls.

Q. Did you do anything in connection with the interview of applicants for bookkeeping employment at the Alpine Dairy office?

A. Yes, Mrs. Wilcox usually sent whoever she

(Testimony of L. Hicks Taylor.)

would like to employ to my office for an interview, and sometimes people would apply at my office, and I would in turn send them to Mrs. Wilcox for her approval.

Q. Did you perform any service for Mr. Forster in connection with acquisition of businesses and property? A. Yes, I did a number.

Q. How frequently and to what extent was that service?

A. Well, I do not recollect each year that these things took place, but to start with, the Puyallup Creamery. [3531]

Q. I wasn't asking for a detailed outline, just the general nature as to the type of work you did, and the frequency.

A. A good many times.

Q. What was the type of work you did in connection with those matters?

A. Usually Mr. Forster had made up his mind to purchase these enterprises, and then would have the records or financial statements and other things, and bring them or have them sent to my office to examine to get my opinion as to whether they were a good approach or not.

Q. In other words, by "good approach," what type of information are you talking about?

A. Relative to the relation of assets to liabilities, and he would generally give me the opinion as to the number of routes, or, if it was an ice cream plant, the production the plant had, and so forth.

(Testimony of L. Hicks Taylor.)

He would usually have all that information to present to me to make a comparison.

Q. Then, was your work in his acquisitions primarily concerned with figures?

A. That is correct.

Q. Did you have occasion to also take time in connection with the Peoples Bank? [3532]

A. Yes, once a year we prepared a complete financial statement of the operations of Mr. Forster's companies for the bank. They usually called for it, and I would prepare that for Mr. Forster.

Q. Are those the type of financial statements that have been introduced in evidence here in this case? A. Yes.

Q. Were those statements signed by you?

A. They were not.

Q. And do you know by whom they were signed, if at all?

A. Mr. Forster signed most of them, I believe.

Q. Did you have any reason for not signing them?

A. I was not the person obtaining loans, or having any banking connections with the bank, so that I felt it was not my responsibility in any way to sign the financial statements.

Q. Did you have any other reasons in connection with the type of work you were doing for these companies?

A. Yes. I did not perform an audit at any time and for that reason I did not feel like signing the reports, or certifying to them in any way.

(Testimony of L. Hicks Taylor.)

Q. Now, this work—extra work—other than the regular monthly accounting that you have testified to [3533] for Mr. Forster, were you—did you receive extra compensation for that?

A. I did not.

Q. How often, during these years that we are talking about, would you see Mr. Forster or talk to him on the telephone?

A. Oh, that would vary, according to the circumstances, but we were in touch with one another quite often during the month, either on the 'phone or at meetings in some occasions.

Q. Mr. Taylor, were you Mr. Forster's financial adviser?

A. That is a big subject, when you speak of a "financial adviser." A financial adviser must have all of the details of a man's cash, a man's assets, of all types. It is my belief that Mr. Forster's financial advisers were the bankers.

Q. Well, what sort of *advisers*, if any, did you give Mr. Forster?

A. He would bring me the books of the enterprises and I used to try to make a comparison as to his buying price as against the values that appeared in the statements.

Q. Did Mr. Forster have any income on his personal returns besides that of the business income of the [3534] Alpine Dairy Company?

A. Yes; usually dividends and interest.

Q. Well, in order to make out his income tax returns what did you do with regard to getting his

(Testimony of L. Hicks Taylor.)

other items of income from sources other than the Alpine Dairy business as such?

A. Well, when I completed the statement on Alpine I would usually request of Mr. Forster that he give me his interest and dividends so that I could include them on the tax returns.

Q. Did you maintain any personal books or records for Mr. Forster which included items of income other than the business records of the Alpine Dairy? A. No, I did not.

Q. Did you ever see any personal books or records of Mr. Forster with such items of income?

A. Not to my recollection.

Q. Now, in that connection there has been some testimony by Mr. Forster concerning Defendants' Exhibit A-61, which I now hand you; do you [3535] recall ever seeing that document?

I better change that.

Do you recall ever seeing it prior to seeing a photostat of it in preparation for this trial?

A. I have no recollection of it.

Q. Did Mr. Forster show you, regularly or irregularly, documents of this type listing his personal assets?

A. I haven't any recollection of it.

Q. Mr. Forster has testified that several times a year, while driving up to Conway, he showed you slips like this and talked them over; is that correct?

A. I can not recall.

Q. Did you know Mr. Forster had a savings account? A. Yes.

(Testimony of L. Hicks Taylor.)

Q. Did Mr. Forster ever give you the right to check into his bank account? A. He did not.

Q. What was Mr. Forster's attitude so far as you were concerned about his personal financial affairs?

Mr. Griffin: Object to the form of that question. [3536]

The Court: Objection sustained.

Q. (By Mr. LeSourd): What did Mr. Forster disclose to you with regard to his personal financial affairs?

A. Mr. Forster generally kept those as his own personal affair and I knew very little except on the Jordan account which, once a year, he would give me a record from Mr. Jordan's office.

Q. Did he advise you of the amounts which he had on deposit from time to time in his savings account? A. He did not.

Q. Did you know from any other source the amount on deposit?

A. No, I did not. I have no recollection of it.

Q. Do you have any recollection of amounts on deposit having been mentioned in conversations?

A. No, I don't have any recollection of it.

Q. Is it possible that such amounts could have been mentioned?

A. I would say it would be possible.

Q. Did you at any time, from any mention made of savings accounts, have any belief as to his receiving additional income above that with which you [3537] were acquainted? A. No.

(Testimony of L. Hicks Taylor.)

Q. Mr. Taylor, did you ever attempt to investigate to see that the information that Mr. Forster was giving you on dividends and interest for these returns was full and complete?

A. I did not.

Q. Why not?

A. I accepted the figures he presented to me as being correct.

Q. What information did he give you on dividends and interest for his returns?

A. As a rule in a lump sum.

Q. That is, a lump sum for——

A. (Interposing) ——of interest; a lump sum of interest and, as I recall, on the Jordan reports there were records of dividends.

Q. Did you get those Jordan reports?

A. I believe actually I had them.

Q. Do you know whether they came directly from Mr. Jordan or from Mr. Forster?

A. To the best of my recollection Mr. Forster gave them to me.

Q. Now, you say that the interest was usually in a lump sum? [3538] A. Yes.

Q. Did you put the information that he gave to you of his personal income on his returns?

A. Yes.

Q. Did you have any reason to believe that he was not giving you full information? A. No.

Q. Did Mr. Forster ever pay you for accounting work on his personal affairs as distinguished from

(Testimony of L. Hicks Taylor.)

the Alpine Dairy business for which you received fifty dollars a month? A. No.

Mr. LeSourd: I think this is a good place to stop, your Honor.

The Court: All right.

Members of the Jury:

We will now recess until tomorrow morning at ten o'clock. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

You may now be excused until ten o'clock tomorrow morning.

(Whereupon, the Jury retired from the court room.)

The Court: You may step down. [3539]

* * * * *

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Direct Examination—(Continued)

Q. (By Mr. LeSourd): Mr. Taylor, when we adjourned the other day we were discussing the manner in which you received information for Mr. Forster's personal return.

Now, just to get our minds back on the subject, what did you do at the end of each year in order to get information for Mr. Forster's return other than that appearing on the Alpine's books?

A. I would request of Mr. Forster all addi-

(Testimony of L. Hicks Taylor.)

tional income he had to place on the books, such as dividends, interest, and other items.

Q. What did you do with that information when you received it?

A. I usually made a memorandum of it. Usually there would be some dividends that did not appear on A. A. Jordan's report and sometimes he would give me one or two or maybe more items of interest that I would make a memorandum of to place on his [3550] tax returns.

Q. Now, were those items of interest separate items of interest for individual sources or were they in lump sums?

A. Usually there would be one, two, maybe three, items—or maybe more—of interest handed to me.

Q. And were they in connection with particular contracts, or other sources, or were they grouped in lump sums?

A. Well, they—the payment interest was usually grouped maybe in two items and other interest might be separately given to me.

Q. Was the—what was the nature of the interest figures given to you with—in connection with whether or not Mr. Forster was paying out any interest of his own on money he borrowed?

A. It was always my opinion that he was giving me net interest.

Q. What do you mean by "net interest"?

A. Well, interest received less amounts paid out.

Q. And during the years here involved were the

(Testimony of L. Hicks Taylor.)

figures for additional income which he gave you entered on his returns? [3551]

A. All that I had knowledge of, yes.

Q. The Government has introduced here, Mr. Taylor, Exhibit 279 which shows as income various items of personal income to Mr. Forster in addition to dividends and interest consisting of checks which were payable to Issaquah Creamery Company but which were deposited to Mr. Forster's savings account 198.

Now, handing you, as among those items, Plaintiff's Exhibit 142, which have been identified here as milk equalization checks from Apex Farms, what do you know about these checks?

A. Not having examined cancelled checks at the Apex Dairy, or Apex Farms, I would have no knowledge of these checks.

Q. Did Mr. Forster ever advise you that he was putting these in his savings account?

A. He did not.

Q. Did you know that any checks of this kind coming into Issaquah Creamery Company were not being recorded on the books of Issaquah Creamery Company? A. I did not.

Q. Did you know that any of these checks were going into account 198? A. I did not. [3552]

Q. Now, similarly, on Exhibit 279, are listed certain checks of Finstad and Utgard for gas, glucose, and other items. I hand you Plaintiff's Exhibit 150 consisting of checks so identified.

What did you know about those checks?

(Testimony of L. Hicks Taylor.)

A. It is possible, that I might have seen them in the books of Finstad and Utgard, but would have no knowledge of how they were being handled.

Q. You mean how they were being handled by Issaquah Creamery Company?

A. That is correct.

Q. Did Mr. Forster ever advise you that he was putting these checks in Account 198?

A. He did not.

Q. And what did you know, if anything, about how they were being handled on the books of Issaquah Creamery Company?

A. I had no knowledge of how they were being handled.

Q. Was it ever called to your attention in any way that they were not going on to the books at Issaquah Creamery Company? A. It was not.

Q. Now, similarly, on Exhibit 279 are certain checks payable to Issaquah Creamery Company for ice cream [3553] mix and such other items from Renton Ice and Ice Cream Company.

I hand you Plaintiff's Exhibit 200, and ask you what you knew about those checks, and also handing you Plaintiff's Exhibit 209 consisting further of a check from Renton Ice and Ice Cream Company to Issaquah Creamery Company, and ask you the same question about that?

A. A few of these checks appear to have my signature on them, and I knew that the Renton Ice and Ice Cream Company were doing business with the Issaquah Creamery Company, but as to

(Testimony of L. Hicks Taylor.)

how they were being handled, I would have no knowledge at Issaquah.

Q. Were these checks which were written by Renton Ice and Ice Cream Company to Issaquah proper checks for payment of bills, or what was their nature?

A. Yes, they are invoices attached here that show what they were in payment of so that they were regular bills by the company.

Q. What was your knowledge as to how they were being handled out at Issaquah, so far as the bookkeeping was concerned?

A. I had no knowledge of how they were being handled out there.

Q. Did Mr. Forster ever advise you that he was [3554] putting these in Account 198?

A. He did not.

Q. By the way, similarly, with regard to the checks of Finstad and Utgard and Apex Farms, which I showed you, do you know whether or not those were payments of proper business expenses?

A. They appeared to be, yes.

Q. Also listed in Plaintiff's Exhibit 279, as income to Mr. Forster, are certain proceeds of casein sales. I hand you, Mr. Taylor, Plaintiff's Exhibit 215 and 233 consisting of certain invoices on casein sales, and certain checks, and a check from Borden's, and ask you what, if anything, you knew about those transactions?

A. I had no knowledge of these transactions at

(Testimony of L. Hicks Taylor.)

all. They were never brought to my attention in any way.

Q. What, if anything, did you know about the casein that was, I believe, in the inventory there at Issaquah?

A. I have a remembrance of casein having been made at Issaquah, and it seems to me that there was something irregular or poor about it, and it was eliminated from the inventory.

Q. And what was brought to your attention after that with regard to this casein? [3555]

A. I didn't hear anything more about it after that.

Q. Did Mr. Forster ever advise you that these casein sale receipts were being put in 198?

A. No, he did not.

Q. Did you have any knowledge that such business receipts were not being recorded on the books of the company? A. I did not.

Q. Now, also listed in Plaintiff's Exhibit 279 as income to Mr. Forster are certain checks from the Arctic Gardens. I hand you Plaintiff's Exhibit 239, Exhibit 240 and Exhibits 253 and 254, and ask you what, if anything, you know about these checks?

A. I presume you knew that I handled all the operations of the Arctic Gardens as far as the bookkeeping was concerned, and all these checks are signed by me. Do you want me to say anything about separate checks?

Q. Well, what are the general nature of these checks?

(Testimony of L. Hicks Taylor.)

A. Well, there are two of them that paid a loan, and——

Q. Now, by "paid a loan", you mean what?

A. Mr. Forster loaned five thousand dollars during a period when we were short of money, and this is [3556] repayment of it.

Q. Were his loans to Arctic Gardens in excess of five thousand dollars?

A. Oh, yes, sir; this was a temporary loan.

Mr. Maxwell: To what exhibit are you referring?

Q. (By Mr LeSourd): What exhibit is that, Mr. Taylor? A. 239.

Q. And as to other checks in these exhibits?

A. Most of these checks appear to be just a payment for service of the drivers' delivery. In most cases, that is what it appears to be.

Q. That was for services of Issaquah Creamery Company for delivery expense incurred by Arctic Gardens?

A. Delivery of frozen foods, yes.

Q. What, if anything, did you know about the handling of these checks when they were received at Issaquah?

A. I had no information as to how they were being handled at Issaquah.

Q. Was it ever brought to your attention that they were not being recorded on the books of Issaquah Creamery Company?

A. It was not. [3557]

Q. (Continuing) As income?

Did Mr. Forster ever advise you that he was put-

(Testimony of L. Hicks Taylor.)

ting these checks in his personal savings account?

A. He did not.

Q. Now, also listed in Exhibit 279 are certain checks for sugar. I hand you Exhibits 234, 229, 230, which are—234, which are checks of Morrissey to Issaquah Creamery Company, 229 are from Holly Sugar Corporation, and 230 from Amalgammated Sugar Company, and ask you what, if anything, you knew about these checks?

A. I at no time ever saw or—saw these checks in any way.

Q. And did Mr. Forster ever advise you that he was receiving income from this source that was going into account 198? A. No, he did not.

Q. And were you ever advised in any way that income from this source was being received and not recorded on the books of Issaquah Creamery Company? A. I did not.

Q. Also listed are certain proceeds from sale of butter which are in Exhibit 279 as income and I hand you Plaintiff's Exhibit 235 which are checks from Stephenson and ask you what, if anything, [3558] you knew about those checks?

A. I never had any knowledge about these checks at all.

Q. Did Mr. Forster ever advise you that he was receiving this income and putting it in his savings account? A. He did not.

Q. And what, if any, knowledge did you have about whether they were—there was income of this

(Testimony of L. Hicks Taylor.)

sort not being recorded on the books of Issaquah Creamery Company?

A. I had no information of that.

Q. Also listed in Exhibit 279 are receipts from Consolidated Dairy Products Company, and I hand you Exhibits—Plaintiff's Exhibits 188, 189, 190, and 191, which are checks from Consolidated Dairy Products Company and ask you what, if any, knowledge you had concerning those checks?

A. I have no knowledge at all of the checks. I have never seen them.

Q. Did Mr. Forster ever advise you that he was receiving income from this source and not putting it in—and putting it in his savings account 198?

A. No, he did not.

Q. Were you ever advised that income from this [3559] source was not being recorded on the books of Issaquah Creamery Company?

A. I was not.

Q. Now, in general, Mr. Taylor, did Mr. Forster ever advise you as to any business receipts that he was putting them in his savings account 198?

A. He did not.

Q. Did you have any knowledge from any source that business receipts of Issaquah Creamery Company were not being recorded on the corporate books of that company?

A. I did not have any such information.

Q. We have had further testimony as to certain currency received by Mr. Forster from Time Oil

(Testimony of L. Hicks Taylor.)

Company, and that, likewise, was listed on Exhibit 279 as income to Mr. Forster.

Did Mr. Forster ever tell you that he was putting in his personal savings account any rebates from Time Oil Company?

A. He did not inform me of such.

Q. Did Mr. Forster—well, what did you know, if anything, about the Time Oil rebates, Mr. Taylor?

A. I had no knowledge of any rebates from the Time Oil Company.

Q. What, if any, knowledge did you have as to [3560] whether Mr. Forster was doing business with the Time Oil Company?

A. I have a recollection that Mr. Forster was quite pleased with a transaction with an Oil Company, giving him an additional rebate, but I don't remember whether it was Time Oil or Signal Oil, or someone else.

Q. Now, what was your information as to how rebates from any oil company were being handled as far as Issaquah Creamery Company was concerned?

Mr. Griffin: Object to the form of that question. Source of his information?

Mr. LeSourd: Well, information from any source, your Honor.

The Court: Would you restate the question, Mr. LeSourd?

Mr. LeSourd: Yes.

Q. (By Mr. LeSourd continuing): What information did you have from any source, Mr. Taylor, as

(Testimony of L. Hicks Taylor.)

to how rebates from oil companies were to be handled? Or did you have information from any source? A. I did not.

Q. How rebates from oil companies were to be handled? A. I did not. [3561]

Q. Did Mr. Forster ever give you any figures for the Time Oil rebates, either exact or estimates?

A. Not to my remembrance.

Q. Well, if he had given you such figures, would you remember them?

Mr. Griffin: Object to the form of that question.

The Court: Objection sustained.

Q. (By Mr. LeSourd continuing): Mr. Forster testified, I believe, that he talked to you several times a year about these rebates. What is your recollection as to this, Mr. Taylor?

A. I haven't any recollection of it.

Q. Can you recall any conversation with Mr. Forster about these rebates?

A. No, I do not have.

Q. Now, this same exhibit, Government's Exhibit 279, shows as income to Mr. Forster checks of Issaquah Creamery Company and Alpine Dairy which were used to pay personal expenses of Mr. Forster and were charged to business expenses on these corporate books, on the books of the businesses.

Now, when—when you examined or went out once a month to get the figures from these books for [3562] your monthly reports, did the information you received from the books and adding machine

(Testimony of L. Hicks Taylor.)

tapes bring to your attention that items of personal expense were included in business expense?

A. No, they did not.

Q. Did Mr. Erickson bring that fact to your attention at any time?

A. No, he did not.

Q. Did Mr. Forster ever advise you that items of personal expense were being charged as business expense? A. No, he did not.

Q. Now, Exhibit 279, likewise lists Alpine Dairy customer discount checks which were deposited in account 198.

What did you know about these discount checks?

A. I have a recollection that Mr. Bezeau discussed some discount checks that were undelivered, and requested what to do with them and I suggested that he return them to Mr. Erickson for cancellation.

Q. Why would they be returned to Mr. Erickson?

A. The only source of cancellation would be through Mr. Erickson's records.

Q. Where were they written in the first place?

A. At Issaquah.

Q. And how did they get into the possession of Alpine Dairy people in Seattle?

A. Mrs. Wilcox figured the discounts for the various customers over the City, made a list of them and sent them to Mr. Erickson, or Mr. Forster, at Issaquah, where the checks were written and—

(Testimony of L. Hicks Taylor.)

that is, the Alpine checks were returned to Alpine —for delivery to the various customers.

Q. Now, you say you advised Mr. Bezeau to return the undelivered ones to Issaquah to Mr. Erickson? A. Yes.

Q. Now, were you advised from any source that these checks, when returned to Issaquah, were not being taken up on the corporate books?

A. I was not.

Q. Were you advised from any source that these checks were not being redeposited in the corporate accounts or business bank accounts?

A. I was not.

Q. Did Mr. Forster ever advise you that he was putting these discount checks in Account 198?

A. He did not.

Q. Exhibit 279 also lists farm income of Mr. Forster. Did you know he had a farm? [3564]

A. Yes, I was aware he had a farm.

Q. Did you know that he was getting income from it during the years here in question?

A. No, I did not.

Q. Did Mr. Forster give you at any time amounts of farm income for inclusion in his returns? A. No, he did not.

Q. Now, Exhibit 279, Mr. Taylor, also lists as income to Mr. Forster, checks of Issaquah Creamery Company used to pay for construction of a barn on this farm and charged to business expense. Did you know that Mr. Forster built a barn?

(Testimony of L. Hicks Taylor.)

A. I knew it, yes, after it was built. I was invited to a barn dance up there.

Q. Did you go to the barn dance?

A. I am afraid I didn't attend.

Q. Did Mr. Forster ever tell you that the costs of this barn were being charged to business expenses by Issaquah Creamery Company?

A. No, he did not.

Q. Did you secure information from any source indicating that the costs of this barn were being charged to business expense?

A. No, I did not.

Q. Mr. Forster, I believe, has testified that as [3565] to various transactions that he entered into, that you told him what bank account to draw on in making payments; is that true?

A. I knew very little about his bank account.

Q. Well, did you or did you not tell him what bank account on which to write checks?

A. I did not.

Q. Exhibit 279 lists as income to Mr. Forster a check of Issaquah Creamery Company dated February 1, 1946, charged to business expense, but used to purchase stock of Apex Farms.

Did you know that this check had been written on Issaquah Creamery Company?

A. I did not.

Q. Did you know that such a check had been charged to business expense?

A. No, I did not.

Q. Exhibit 279 also lists as income to Mr. For-

(Testimony of L. Hicks Taylor.)

ster, checks received for the sale of equipment and deposited to his personal savings account 198.

What did you know about these checks?

A. I had no knowledge of them.

Q. Did Mr. Forster ever tell you he was depositing these checks to 198?

A. He did not. [3566]

Q. Did you have information from any source that such checks were not being recorded on the company books? A. No, I did not.

Q. 279 also lists various Alpine Dairy checks deposited to 198, including Northwest Basketball Tournament, Seattle School District No. 1, Community Chest, Milky Way, Incorporated.

What did you know about these checks?

A. I had no knowledge of them.

Q. Did Mr. Forster ever tell you that he put those in Account 198? A. No.

Q. Did you know in any other way that they were not being properly handled on the books?

A. No.

Q. Also, there is listed in the exhibit 279 a check of Puget Sound Products Company, but deposited to Account 198 and charged to Butter Expense.

What did you know about this check?

A. I had no knowledge of it.

Q. Did Mr. Forster ever tell you that he was putting this check in 198?

A. He did not.

Q. Did you ever know anything about the Puget Sound Products transaction? [3567]

(Testimony of L. Hicks Taylor.)

A. Is that—I have a question to ask.

Was Mr. Grill at one time in the Puget Sound products?

Q. Yes, that is the transaction.

A. If that is the transaction, I knew Mr. Forster had a dealing with Mr. Grill on Puget Sound Products, but that is as far as I knew about it.

Q. As far as this particular check is concerned, your testimony is as to your knowledge.

A. I had no knowledge of this particular check.

Q. Did you have information from any source that such a check had been charged to butter expense on the corporate books?

A. I did not.

Q. Now, 279 also lists as income to Mr. Forster some Alpine Dairy checks in 1949 to Cook and Grant which were deposited in Account 198. What knowledge did you have about these checks?

A. I had no knowledge of them.

Q. Did Mr. Forster ever tell you he was putting these in 198? A. No, he did not.

Q. And did you have any information at all that would indicate there were checks of this sort being improperly handled as far as the bookkeeping was [3568] concerned?

A. No, I had no knowledge of it.

Q. Now, in addition to the Arctic Gardens checks that I showed you, Mr. Taylor, there is another check listed on 279, a check of $773.21 from Arctic Gardens, which 279 lists as interest.

It may be among those that I handed to you. I

(Testimony of L. Hicks Taylor.)

am not sure. Were you familiar with that payment? A. Yes, I remember it.

Q. Would you explain the circumstances of that payment of $773.21?

A. When the Arctic Gardens was organized, or a few weeks after it, possibly, Mr. Brehm and Mr. Forster loaned the Company $3,500 each. On this particular date, Mr. Brehm and Mr. Forster came to my office, this date is December 31, 1945, and I am reading from Exhibit 239. They would like to have interest to pay the bank, so I wrote two checks for identically the same amount, one to Hans Forster and one to Mr. Brehm for $773.21. I do not know as to what Mr. Forster did, but Mr. Brehm was going right to the bank to pay the interest. I know that.

Q. Were these checks delivered in time to Mr. Forster?

A. They were delivered to him personally in my [3569] office.

Q. Now, were there—was such interest paid on these loans in any later years?

A. Later, the inventory was pledged to the bank. It is my recollection that the Arctic Gardens paid the interest to the bank after that time.

Q. Direct to the bank?

A. It is my opinion it was paid that way.

Q. Was that on the loans where the inventory, as you say, was pledged? A. Yes.

Mr. LeSourd: Excuse me a moment, your Honor.

Q. (By Mr. LeSourd): Handing you, Mr. Tay-

(Testimony of L. Hicks Taylor.)

lor, Plaintiff's Exhibit 257, which has been identified as your work sheet for Alpine Dairy, December 31, 1945, and I call your attention to some items marked "Dividend" and "Peoples Bank" near the bottom of the work sheet. Can you tell us what those are?

A. From my recollection of this, the dividend was from the Washington State Bank, and I note I have two items of interest. While they are not labelled "interest", they are labelled "Peoples Bank", one item of one thousand dollars, and apparently the Peoples Bank has been dittoed, $1,209.45. [3570]

Q. Where did those figures come from?

A. Mr. Forster gave them to me.

Q. Are these the notations that you spoke of you made at the end of the year?

A. Yes, upon this work sheet.

Mr. Obenour: What is the number of that again?

The Witness: Exhibit 257.

Q. (By Mr. LeSourd): What was your understanding——

Mr. LeSourd: Cancel that.

Q. (By Mr. LeSourd continuing): What was the relationship, if any, of this check of $773.21 interest, which we just mentioned, to these two figures that you have on this work sheet?

A. The figures here were, as I understand it, the net interest earning figures of Mr. Forster.

Q. And by "net", I think you already explained——

(Testimony of L. Hicks Taylor.)

A. (Interposing) It would mean the interest received less interest paid out.

Q. On your return that you filed for Mr. Forster, did you place any statement with regard to the source and extent of the information you used in making out the return? [3571]

A. Yes.

Q. In what form was this statement?

A. In the form of a rubber stamp under the—over the affidavit of the party preparing the return.

Q. To what extent, and in what circumstances are statements of this sort used in the accounting profession?

A. There are a great many accountants using the stamp, especially where an audit or a verification is not made.

Q. Now, what was the general nature of the statement on this rubber stamp put on these returns?

A. "Prepared from information furnished by the taxpayer without audit of the details contained therein".

Q. Now, passing, Mr. Taylor, from Exhibit 279 to Exhibit 280, which is the Government's statement of additional income of the Issaquah Creamery Company:

I will ask you about the items that aren't merely duplications of Exhibit 279 that we have already discussed. One item I would like to ask you about are receipts from the sale of ice cream, which, ap-

(Testimony of L. Hicks Taylor.)

parently, were thought to be over quota, but also, apparently, were not actually over quota.

Did you know that any receipts from the sales of ice cream were not being entered in the records of [3572] Issaquah Creamery Company as income?

A. I did not.

Q. Did you know that any such receipts were not being deposited in the Company bank account?

A. I did not.

Q. Now, also listed as additional sales of Issaquah Creamery Company on Exhibit 280 are sales of milk to Alpine Dairy, reduced, according to the Government's contention, $10,000 per month in 1948 and similar reductions in 1949.

What information do you have as to these transactions?

A. I don't know that I am clear,——

Q. (Interposing) These, Mr. Taylor, are the reductions in the price of milk being sold by Issaquah Creamery Company to Alpine Dairy in the years 1948 and 1949 that the Government contends constitutes a constructive dividend, or some such matter.

A. From my recollection, there was a price differential between Issaquah and Alpine, but as to these particular items, I was not familiar with the items themselves.

Q. What did you know about the pricing of milk being charged by Issaquah to Alpine?

A. I had no knowledge of it. I was not familiar [3573] with it in any way.

(Testimony of L. Hicks Taylor.)

Q. Did you have anything to do with it in the course of your work for these companies?

A. No.

Q. Did you know that any particular price adjustment had been made in these years between these two companies?

A. It did not come to my attention.

Q. Now, also listed on Exhibit 280 were certain year-end adjustments for 1949, and I refer particularly to Exhibit 280, item "C", 4, 5 and 6. I will read them to you, to refresh your recollection. Item C-4, purchases overstated by duplicating liabilities to Consolidated Dairy on the books of Issaquah Creamery Company on November 30, 1949, $51,-578.76; purchases overstated by recording a liability to R. L. Stephenson, paid in December, 1949, as a liability, on December 31, 1949, on Issaquah Creamery Company, corporation books, $18,859.50, and check of Issaquah Creamery Company, Incorporated, made payable to Puget Sound—that is a different item—and the third item is milk purchased from farmers, raised on the books of Issaquah Creamery Company, November and December, 1949, ten thousand dollars.

Now, will you tell us, Mr. Taylor, exactly [3574] what happened at the end of 1949 when you went to Issaquah to get your information for your year-end statement?

First, when did you go?

A. It was on the last Saturday of January in 1950.

(Testimony of L. Hicks Taylor.)

Q. Who was present at Issaquah Creamery Company when you were there?

A. Mr. Forster and Mr. Taylor.

Q. Now, would you describe to us exactly what happened on that day when you were there?

A. I performed my usual duties of posting the various journals and completed my figures in a tentative stage, and late in the afternoon, Mr. Forster and Mr. Erickson and I stepped into his private office, into Mr. Forster's private office, to discuss the profit figure for the year. To the best of my recollection, the profit figure was some $100,000 or $101,000 for the year of 1949. Mr. Forster looked at the figure, and he said, "That is impossible. Nobody has made any such money as that. It just isn't in the cards to make that much money."

I said, "Well, Mr. Forster, that is what my ledger shows. That is what it displays, and I don't think there is anything else we can do about it."

He says, "Well, there is a mistake there [3575] somewhere."

And I immediately said to Mr. Forster and to Mr. Erickson, "If you will check it over and let me know, I will hold the ledger open and not close it so that I can make the necessary adjustment if you find that I have made any errors or there are any errors in the journals. There are not any on the ledger that I can see at the present moment."

Q. Was anything said in that conversation about hiring another accountant?

(Testimony of L. Hicks Taylor.)

A. Mr. Forster said that he thought he would have some other accountant check it over.

Q. Now, what—how was the matter left between yourself and Mr. Forster and Mr. Erickson?

A. I told them that I would go back to Seattle and I would hold the work sheet until I heard from them as to any changes if they might find any errors.

Q. Handing you, Mr. Taylor, Plaintiff's Exhibit 259, I will ask you what that is?

A. This is the very work sheet that was discussed at that meeting on January of 1950.

Q. Now, there has been some testimony by Mr. Forster with regard to your giving him information on a substantial profit for the month of December, 1949. Would you state whether or not you gave Mr. Forster [3576] any figures for the month of December?

A. I haven't any recollection of discussing the month of December singly.

Q. Did you tell him that there was a profit in the month of December, or do you have any recollection of that matter?

A. I don't believe I mentioned any profit for December at all.

Q. Handing you Plaintiff's Exhibit 259-A, I will ask you what this is.

A. This is a similar work sheet of the Issaquah Creamery Company for the period January 1st to November 30, 1949.

(Testimony of L. Hicks Taylor.)

Q. What does that show as the profit up to the end of November?

A. It displays a net profit of $121,133.54.

Q. And what did you state the original figures were that you showed Mr. Forster for the year-end?

A. My recollection was it was $101,000.

Q. That would then show a loss for December, wouldn't it?

A. It would show a loss of twenty thousand odd dollars for the month of December.

Q. After this day at Issaquah at the end of January, 1950, what happened with regard to these adjustments? [3577]

A. I held the ledger and work sheets open until early in March. I cannot quote the date. I 'phoned Mr. Forster and asked him if I should proceed with the Issaquah Creamery Company as I had it, and he said "No, call Mr. Erickson." There were to be some changes.

I called Mr. Erickson and went to Issaquah and received the figures that I show on an adjustment column on this work sheet.

Q. Now, what figures are those in connection with the three items that I read to you from Exhibit 280, these items being a ten thousand dollar increase in milk purchases, a $51,578.76 increase in Consolidated Dairy for purchases, and $18,859.50 increase in purchases?

What figures were you given in connection with that matter?

A. I displayed two of these figures. I displayed

(Testimony of L. Hicks Taylor.)

the ten thousand dollars milk drafts, $51,578.76 increase in accounts payable.

Q. What about the $18,859.50 item?

Mr. Keesling: Would you indicate what you are referring to now?

Mr. LeSourd: Yes, the item——

Mr. Keesling: (Interposing) Previously.

The Witness: I am quoting from Plaintiff's [3578] Exhibit 259.

Q. (By Mr. LeSourd continuing): And in giving those figures, are those two figures you just gave us, do they appear on your work sheet?

A. They appear on this work sheet here, yes.

Mr. Maxwell: What is that, now?

Q. (By Mr. LeSourd): Is that Exhibit 259?

A. They appear on Exhibit 259.

Q. That is your work sheet for the year-end 1949? A. Correct.

Q. And when did you put those figures on the work sheet?

A. Sometime early in March, 1950.

Q. Again, how did you get those figures?

A. I went to Issaquah, and Mr. Erickson gave me these two figures.

Q. Now, the third figure listed on Exhibit 280 as an overstatement of purchases for the year 1949 is R. L. Stephenson of $18,859.50. What was your knowledge, if any, as to that item?

A. I never had any knowledge of the R. L. Stephenson figure. [3579]

(Testimony of L. Hicks Taylor.)

Q. Was there ever any change made in your work sheet on figures in such an amount?

A. I do not display it at all.

Q. Now, when you were given these figures and put them on your work sheet, what then did you do?

A. I recollect that I showed them to Mr. Erickson.

Q. Was there—were there other adjustments besides these which were given you at the time?

A. He called my attention to, I would say, an error——

Q. In another——

A. (Interposing) In another figure, yes.

Q. And then what happened?

A. And then I completed this, and, as I remember, I left a little tab with Mr. Erickson to give Mr. Forster, and to let me know if I should go ahead with the figures I had developed here.

Q. And what happened then?

A. I didn't hear anything more from them, so I proceeded and finished the income tax return.

Q. Now, these two items of increased liabilities that you have testified were given you, total $61,578.76, what—with the other adjustments which were made—what was the result of that in terms of the income for the year 1949? [3580]

A. The income for the year was reduced by the amount of $51,578.76.

Q. Were your suspicions aroused by this change, Mr. Taylor?

(Testimony of L. Hicks Taylor.)

A. No, Mr. Forster so thoroughly convinced me that there was an error, I compared it with the 1948 return and found that the sales were a little less in 1949 than they were in 1948 and I felt that it looked consistent and proceeded.

Q. How did the income arrived at in 1949 compare with 1948?

A. As I remember it, the income in 1948 was less than 1949, net income.

Q. Will you state whether or not you felt it was your responsibility to check into the accuracy of these changes?

A. No, I didn't feel that it was. It was near the deadline of preparing the returns, and I had confidence in Mr. Erickson, so I made no further effort to check them.

Mr. LeSourd: It is recess time, your Honor.

The Court: All right.

Ladies and Gentlemen of the Jury:

It is now time for the morning recess. The Court calls your attention to the admonition given you [3581] on similar occasions, and asks that you heed the admonition given on this occasion. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:02 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:16 o'clock a.m. April 13, 1954, at which time, counsel and defendants heretofore

(Testimony of L. Hicks Taylor.)

noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): In the testimony in this case, Mr. Eppler said that Mr. Erickson had said that you had instructed Mr. Erickson to change his journals on liabilities at the end of 1949 to the extent of approximately eighty [3582] thousand dollars.

Did you give him any such instructions?

A. I did not.

Q. Did you instruct or advise him to make any changes whatsoever? A. I did not.

Q. Did you have any further discussion with Mr. Forster about this matter after you were out at Issaquah the first part of March and got these changes which you spoke of?

A. Yes, I called Mr. Forster to come to the office, to my office, in the Textile Tower to sign the tax return and notified him of the amount of the check necessary to accompany the return. I took the work sheet and showed Mr. Forster the changes,

(Testimony of L. Hicks Taylor.)

and I said, "I will change my ledger accordingly, and you and Harold will have to substantiate the changes that are made."

And I showed him the 1948 return and said, "They look very much in line."

Q. What, if anything, did he say?

A. He said, "That is O.K., we will take care of it."

Q. Was this at the time the return was signed?

A. It was at the time the return was signed and it was mailed, I believe, that same day.

Q. Did you put a statement on the returns for [3583] Issaquah Creamery Company concerning the source of your information and extent of it that you used to make out those returns?

A. Yes, I did.

Q. Was this statement similar to that put on Mr. Forster's individual return?

A. It is my remembrance that I used a little different stamp on a corporation. It read, "Prepared from the information—"; "Prepared from the books of the corporation without audit of the details".

Q. Turning, Mr. Taylor, to the Renton Ice and Ice Cream Company, what was your first contact with that operation?

A. My recollection is 1942.

Q. And would you explain how it came about that you were informed as to that matter?

A. Mr. Forster informed me that Mr. Baskett and Mr. Schneider had made some arrangements to

(Testimony of L. Hicks Taylor.)

purchase the Renton Ice and Ice Cream Company, and that he would—was going in with them, and that, if I recollect correctly, the first meeting I had was at Mr. Wettrick's office with Mr. Forster, Mr. Baskett, and Mr. Schneider, and Mrs. Baskett, by the way, was present.

Q. What happened there at that meeting?

A. That was an organization meeting. I might say [3584] there was considerable discussion before the organization meeting.

Mr. Tom Williams was not in favor of having Mr. Schneider or Mr. Forster connected with it. He wanted Mr. Baskett to have this business as his own so it was necessary that Mr. Forster, especially, not have his name identified in it for competitive reasons, and it was thought wise that I be the incorporator in place of Mr. Forster with the other two. The company was formed then, composed of Mr. Baskett subscribing his ten shares, and Mr. Schneider for ten, and L. H. Taylor for ten, and the corporation was then organized by Mr. Wettrick.

Q. What did you have to do in regard to Mr. Forster's negotiations in regard to putting money into the business?

A. I haven't any recollection of having anything to do with the financing in any way of it.

Q. Did you receive any stock?

A. It is my recollection that ten shares were issued in my name, and endorsed in blank back to

(Testimony of L. Hicks Taylor.)

Mr. Forster, endorsed in blank, not with Mr. Forster's name on them.

Q. What happened to the stock certificates?

A. They were turned over to Mr. Forster.

Q. And then you became, as you said, an incorporator. Did you also become a director?

A. Yes, they requested that I serve as a director, and the by-laws calling for the officers—they created the secretary-treasurer as one office and I was elected to that office.

Q. There has been testimony in this case, Mr. Taylor, concerning payments made by Schneider, Baskett, and later, Mrs. Baskett, or Mrs. Lovenger, to Mr. Forster, from their salaries.

What was your first contact with this matter?

A. It was in '42—1942—as to the date I am a little vague. We were in the Issaquah—or in the Renton Ice Cream office. Mr. Baskett, Mr. Schneider, Mr. Forster and myself.

Q. To refresh your recollection, was this the first meeting of the corporation?

A. It was the first meeting where salaries were established, and that, as I recollect, was in September, 1942.

Q. Is this the meeting of which we had the minutes in the minute book of the company?

A. That is my recollection.

Q. Now——

A. (Interposing) That—— [3586]

Q. (Continuing) What occurred at this meeting?

(Testimony of L. Hicks Taylor.)

A. Salaries were discussed at great length. Mr. Baskett and Mr. Schneider found that when they moved from Issaquah, that $50 a week in Renton didn't go nearly as far as it did in Issaquah, and they were very anxious to have a little more compensation, and there was considerable more discussion along that line, and finally it was determined that Mr. Forster did not care to become identified on account of the competitive reasons as mentioned before, and he did not want to draw a salary, so the salary of Mr. Schneider and Mr. Baskett were set at $500 a month. They were to draw it $50 a week, $2400 a year, and the balance of $3600 was to be divided two and one, Mr. Forster to receive one-third of each of their salaries as an income or an earning and it was agreed at that time that Mr. Forster would deposit his checks in the Alpine Dairy Bank Account, so that the income could be taken into account there.

Q. Did this all occur at this meeting?

A. That same meeting, yes.

Q. So it was understood at that meeting that——

Mr. Griffn: (Interposing) Objected to as leading.

Mr. LeSourd: Very well. [3587]

Q. (By Mr. LeSourd continuing): Now, why did —did you advise Mr. Forster to treat these items as salary on his income tax return?

A. That was the intent, to not have to report it on the face of his return as salary, like from the

(Testimony of L. Hicks Taylor.)

Issaquah Creamery Company, so that it would make him identified with the Renton Ice and Ice Cream Company at that time.

Q. Now, what part, if any, did you thereafter take in making out the salary checks?

A. It is my recollection that I made them out that year, the understanding being that—the understanding was that there would be two checks made to each, one check for two-thirds and one check for one-third. If I remember correctly, $3600 was the amount the first time, the checks for $1200 to be endorsed by Mr. Schneider and Mr. Baskett to Mr. Forster.

Q. By the way, going back to the meeting at which the salaries were fixed was Mr. Forster present at that meeting? A. Absolutely.

Q. Did you ever order or direct Mr. Schneider as to turning over to Mr. Forster funds from his salary? [3588]

A. I certainly did not.

Q. Did you prepare the income tax returns of Mr. Schneider and Mr. Baskett, and, later, Mrs. Baskett? A. I did.

Q. What was reported on their returns with regard to these salaries?

A. The entire salary drawn as it was voted in the By-laws, or in the minutes.

Q. Why was that done, Mr. Taylor?

A. Because the voted salary had to be reported by them as far as I was concerned.

(Testimony of L. Hicks Taylor.)

Q. Now, in connection with their returns, was the tax paid on the full salaries?

A. It was.

Q. How was this tax paid?

A. The first year's, the tax was paid separately, I believe. Then the withholding tax became in effect, and withholding was taken from the entire amount each year.

Q. And what about the reporting of this amount on the returns themselves; was tax paid in connection with the returns?

A. They each had sometimes additional income that would develop a larger tax and the withholding [3589] tax was deducted with the difference paid by Mr. Schneider and Mrs. Baskett.

Q. Now, in the years 1945 through 1949, what was the nature of your accounting services for Renton Ice and Ice Cream Company?

A. When Mr. Baskett passed away, because of the situation of having two signatures at the Renton Ice and Ice Cream——

Q. (Interposing): You are talking about the checking account now?

A. The bank account having two signatures, it was necessary for someone to go there during the week. I used to go out once or twice a week and sign checks with Mr. Schneider, and I handled many other things besides actual accounting work for the Renton Ice and Ice Cream Company, Rent Controls, and sometimes got a little bit into the

(Testimony of L. Hicks Taylor.)

labor picture, so that I spent time that wasn't always strictly accounting work.

Q. When did Mr. Baskett die?

A. My recollection is January of 1945.

Q. Now, in these years, 1945 to 1949, what was the nature of the strictly accounting work you did?

A. Well, it was running the general ledger.

Q. How often did you take the figures from the Renton Ice book for your general ledger? [3590]

A. Once a month.

Q. And was the type of operation similar to that at Issaquah inasmuch as getting figures?

A. Very much the same, yes.

Q. Did you get out monthly reports for Renton Ice and Ice Cream Company?

A. Yes, I prepared reports for Mr. Forster and Mr. Baskett and Mr. Schneider.

Q. Were copies sent to each? A. Yes.

Q. Now, what was your basic compensation at Renton Ice during these years?

A. Basic compensation was fifty dollars a month, and for the extra I received, some years, a six hundred dollar additional payment.

Q. Now, was this extra compensation you spoke of approved by anyone on behalf of the company?

A. It was approved by both Mr. Schneider and Mr. Forster.

Q. And what was Mr. Schneider's position with the company?

A. He was president of the company.

(Testimony of L. Hicks Taylor.)

Q. And who signed the checks that paid you this compensation?

A. Mr. Schneider, and I believe, I signed all [3591] the others with Mr. Schneider.

Q. You were countersigning a number of checks, were you? A. Yes.

Q. Mr. Taylor, there has been introduced here a so-called accounts payable ledger, or accounts payable journal, rather, which includes the years 1946 and 1947.

Mr. LeSourd: Would you get those, please?

(Whereupon, documents were handed to Mr. LeSourd by the Clerk.)

Q. (By Mr. LeSourd continuing): Now, referring to the—referring to the income tax return for Renton Ice and Ice Cream for the year ended July 31, 1946, which I hand you, as Plaintiff's Exhibit 26, and referring to the so-called accounts payable journal, being Plaintiff's Exhibit 212, and opened at the heading August 1, 1946, which I understand is for the month of July, 1946, I will ask you if you secured the figures for accounts payable which you used in your return from the itemization of accounts payable listed in that journal?

A. I did not.

Q. Well, how—first, why did you not use that journal in securing your accounts payable figures?

A. This book was not even half filled out, or one-third filled out at the time I was there. I took a journal sheet of paper and Mr. Schneider handed me the various invoices and statements and I sat

(Testimony of L. Hicks Taylor.)

down and wrote a schedule of accounts payable from the invoices and statements presented to me, and arrived at figures that I wrote right on this sheet here what they were composed of.

Q. Would you read those figures, Mr. Taylor?

A. Mix, $8,089.10; Beer, $4,387.25; Resale, which included Expense items as well, $1,861.70, making a total of $14,338.05.

Q. Now, I notice at the bottom of the detailed entries in that accounts payable journal is a total of $14,338.05. Is that in your writing?

A. That is in my handwriting, yes.

Q. Again referring to the bottom of the page, is that figure at the bottom of the page your handwriting? A. Yes.

Q. I am calling attention now to the total right at the foot of all the figures.

A. You mean right there?

Q. Yes.

A. That is the same total of $14,338.05.

Q. Is that in your writing? [3593]

A. That is in Mr. Schneider's handwriting.

Q. Now, was there any total there when you wrote your figures on that page?

A. There was not.

Q. Mr. Schneider, I believe, testified that he had written in a total there previous to your coming of $8,338.05 and you had him change it to $14,338.05. Is there any indication in that figure on that page that it has ever been changed?

(Testimony of L. Hicks Taylor.)

A. There isn't anything that shows it has been changed in any way.

Q. Now, referring to the next year, Mr. Taylor, for 1947, under the heading of August 1, 1947, in Plaintiff's Exhibit 212, which I understand is for the month of July, 1947, and also handing you the income tax return of Renton Ice for the year ended July 31, 1947, would you tell me what the amount is of accounts payable that you used in the income tax return for the year ended July 31, 1947; and will you give us the exhibit number of that return?

A. I am reading from Exhibit 27, the corporation income tax return of the Renton Ice and Ice Cream Company, a fiscal year, corporation operating from August 1, 1946, to July 31, 1947. I am turning to the last page, page 4, schedule "L", balance sheet. The [3594] balance sheets run up and down the sheet, and then, line 9, under Liabilities, the amount of $16,679.56 shows as accounts payable.

Q. Now, turning to the accounts payable journal, what is the total shown at the footing of the accounts payable journal for the month?

A. $18,277.36.

Q. Do you recall Mr. Schneider's testimony that he watched you total the pages for that month and put nine "1's" in front of various items in that journal? A. I heard that testimony.

Q. What is the fact as to whether you put nine "1's" in front of those totals?

(Testimony of L. Hicks Taylor.)

A. I absolutely did not put nine "1's" in front of those totals.

Q. And what is the fact as to whether or not you totalled those pages at all?

A. This book was just about one-third entered. It was skipped around here, an entry now and then. As I understood—no, this one is not the one. I take it back. I was thinking of the other one.

Q. The 1946 one?

A. Yes. This book I did not have in my possession at any time, as I remember it. [3595]

Q. You mean at the end of this July?

A. Yes, because if I had, I would have had some notes on the page showing that I had seen this book.

Q. Well, then, what is your testimony as to whether you ever totalled the columns for that July, 1947?

A. I did not total any columns in July, 1947.

Q. And the total of $18,253.11 appearing at the end of those figures, what is the fact as to whether or not that is in your handwriting?

A. That is not my handwriting.

Q. Is either total in your handwriting? There are two totals there, I believe.

A. Neither total is in my handwriting.

Q. Now, the figure you stated for accounts payable that you used on the return for that year was about 16,000-odd dollars, as I recall your reading it. Is there any combination of figures on the return itself which arrive at the same total as is written in this accounts payable journal?

(Testimony of L. Hicks Taylor.)

Do you need a pad of paper?

A. I have it already. By taking the accounts payable item as item 9 on schedule 27—Exhibit 27, of $16,679.56, and on line 11, there is an account called accrued expenses and typed in as taxes of $997.80, wages, [3596] which was my check for $600, added, make a total of $18,277.36, the same as the journal shows.

Q. The same as the last total in the journal?

A. That is correct.

Q. Now, does this accounts payable journal include any item of tax? A. It does not.

Q. Now, was there any source from which this total that appears—the final total that appears in that accounts payable journal could have been secured?

A. Two or three ways it could have. He might have taken it from my work sheet I had on the desk, could have taken it from the report I mailed to them, and he could have taken it off from this tax return.

Q. Now, the report that you mailed to them, what was the fact as to whether or not these three items that you have read add up to the same total as was in this journal and include the item of taxes —what is the fact as to whether those three items appear together in—might appear together in these reports?

A. They may have. I haven't definite recollection, but my recollection is I showed the total of

(Testimony of L. Hicks Taylor.)

$18,277.36 and I presume I put it on the forms that I sent to them.

Q. Now, turning, Mr. Taylor, to Finstad and [3597] Utgard. What was your first contact with Finstad and Utgard?

A. I believe in 1943. I am not positive.

Q. And what was the nature of that first contact?

A. The first contact was: Mr. Grant, Mr. Cook, Mr. Egeness were at Conway, I believe, and Mr. Forster picked me up, and we went to Conway and had a meeting there with the intention of picking up the books that were up there, but they were not ready for me at that time.

Q. What occurred thereafter?

A. It seems to me that the next month we went up there—it might be a shorter time than that—and Mr. Black, the accountant for them, had completed the books and we—I glanced through the trial balance that Mr. Black had made from the ledger.

Q. Who was in charge of the operating of the company up there?

A. Mr. Verne Egeness.

Q. Now, did Mr. Forster enter into an agreement with Mr. Egeness and Mr. Grant and Mr. Cook for the—in connection with the stock of that company?

A. Yes. Mr. Grant, Cook and Egeness made an arrangement to dispose of their interest to Mr. Forster. [3598]

(Testimony of L. Hicks Taylor.)

Q. And that is the agreement that is here in evidence, is it? A. Yes.

Q. Now, at any—at any time, did you have a discussion with anyone concerning payments to Mrs. Finstad? A. Yes.

Q. Would you explain when that was, and where?

Mr. Griffin: With whom?

Q. (By Mr. LeSourd continuing): And with whom?

A. To the best of my recollection, it was—it might have been—the same trip up there, or the next one, and those were made once a month, approximately the same part of the month. Mr. Forster and Mr. Egeness and I were present in the office, and a discussion was had relative to the operations generally, and a discussion was then had relative to Mr. Egeness' salary. My recollection of the discussion was this: That Mr. Egeness' salary would be set at $600 a month, to draw $300 in cash, and to pay $300 to Mrs. Finstad for an interest, and ten per cent of the profits.

Q. Who made the decision as to this salary?

A. Mr. Forster.

Q. Now, had you found anything in examining the books of Mr. Black with regard to the manner of payment [3599] to Mrs. Finstad prior to Mr. Forster's coming into the picture?

A. Yes, Mrs. Finstad was being paid from the salary accounts of Mr. Grant, Mr. Cook and Mr. Egeness.

(Testimony of L. Hicks Taylor.)

Q. In connection with this discussion you have just mentioned with regard to Mr. Egeness' salary, was there any statement as to the reason for Mr. Egeness continuing to make payments to Mrs. Finstad?

A. The general discussion was that Mr. Forster didn't feel that he had the funds and he would like to have Mr. Egeness become a part owner with him and to increase his interest in the Finstad and Utgard operation.

Q. Well, was that discussion with regard to Mr. Egeness becoming a part owner tied in in any way with the payments to Mrs. Finstad that were to be made to Mrs. Finstad?

A. Yes. I assumed from the conversation that it was to continue the—continue in his position purchasing 25 percent of the stock, and I so set up the ledger to take care of the entries for Mr. Egeness' salary account and payment to Mrs. Finstad, and that continued in the ledger until the time I left Seattle.

Q. Now, who made out the tax returns for Mr. [3600] Egeness? A. I did.

Q. What did his returns report as to the salary he received from the corporation?

A. He received the full salary of $600 a month.

Q. Was the tax paid on this whole salary?

A. The tax was paid on this whole salary by Mr. Egeness.

Q. Now, what was your understanding in the years 1945 through 1949 as to the stock of Finstad

(Testimony of L. Hicks Taylor.)

and Utgard, and in whose name it was held?

Mr. Griffin: Object to the form of that question. What difference is it what his understanding was? It has got to be based on conversations, agreement or facts, and the documents in evidence.

Mr. LeSourd: I am not asking for a legal conclusion. I am asking what he knew at the time.

Mr. Griffin: You didn't ask what he knew; for his understanding. I am objecting to the form of the question.

The Court: I think as you state it, the question is objectionable. If you are asking what he knew, it will be so considered.

Mr. LeSourd: Very well, your Honor. [3601]

Q. (By Mr. LeSourd continuing): Insofar as your knowledge went during these years, how was the stock of Finstad and Utgard held?

A. It was my understanding that it was held in the name of Mrs. Finstad.

Q. Now, Exhibit 252, Mr. Taylor, is a statement of net worth of Mr. Forster dated February 28, 1948, in your handwriting, and contains Finstad and Utgard, sole owner. In other words, showing Mr. Forster the sole owner of Finstad and Utgard. What was your reason for making that statement on that net worth statement?

The Court: What statement is that by exhibit number, Mr. LeSourd?

Mr. LeSourd: 252.

A. May I ask who the statement was made out to?

(Testimony of L. Hicks Taylor.)

Q. (By Mr. LeSourd): Well, let's get the statement. I hand you Plaintiff's Exhibit 252, and ask you if that is the net worth statement in your handwriting?

A. Yes. This is the—a statement made as of February 28, 1948, purporting to be the financial statement of Hans Forster. The reason for it is in the descriptive part. Finstad and Utgard net worth, sole [3602] owner, $74,699.46; but, on the bottom of the page, I have contingent liabilities, $190,000 which, as I recollect, included some amount that Mr. Egeness had paid to Mrs. Finstad.

Q. Did you have any knowledge during these years as to any legal rights that Mr. Egeness had with regard to stock interest in the company?

A. Only that as I understood it, none of the three parties who sold—who were selling to Mr. Forster were released from their legal thing with Mrs. Finstad.

Q. With regard to the securing of interest in the stock itself, what knowledge did you have, if any, as to the relationship of Mr. Egeness during these years? Maybe I don't make myself clear on that question.

Mr. LeSourd: I will withdraw the question.

Q. (By Mr. LeSourd continuing): Do you know when Mr. Forster actually received the stock of Finstad and Utgard?

A. I have to refer to this case to know. It was after I left the——

(Testimony of L. Hicks Taylor.)

Q. (Interposing): Other than what you have learned here in this case. [3603]

A. The records still show in the books that Mr. Egeness had paid the contract.

Q. Did you have anything to do with the release of the stock from escrow and delivery to Mr. Forster? A. I did not.

Q. Now, during the years 1945 to 1949, did it occur to you to enter in Mr. Forster's return the amounts which Mr. Egeness were paying to Mrs. Finstad? A. It certainly did not.

Q. Did you deem it to be income of Mr. Forster in any way? A. I certainly did not.

Q. Now, as I recall it, Mr. Taylor, Mr. Egeness testified that while he paid the tax to the Collector on his full $600 salary that Finstad and Utgard corporation reimbursed him for part of the tax. Was there any reimbursement to your knowledge?

A. Not to my knowledge.

Q. What did you do with Mr. Egeness' tax returns after you made it out?

A. I usually made them out in my office, and would mail them to him for his signature and for his payment.

Mr. LeSourd: Excuse me, a moment.

(Whereupon, there was a brief pause.)

Q. (By Mr. LeSourd): Plaintiff's Exhibit 149 contains two checks to Mrs. Finstad on February 28, 1950, one for $2500 and the other for $2,000. There has been some testimony which might indicate that the name of the payee on these checks

(Testimony of L. Hicks Taylor.)

was written by you. What is the fact as to that?

A. That is certainly not my handwriting.

Q. To what extent did you sign checks for Finstad and Utgard, or draw checks, rather; either one?

A. It is my recollection I never signed a check at Finstad but I believe that on one of the accounts, either they had two bank accounts, one at Stanwood and one at Mt. Vernon, and I believe my name was put on one of those, but I never signed a check as long as I was connected with them.

Q. At times, did you have occasion to draw checks or fill them out?

A. Oh, yes. If I was sitting at the desk, they would hand me something to write out, right along.

Q. Now, turning to Simonson and Forster, what did you do with regard to the incorporation of Simonson and Forster, if anything?

A. It is my recollection that that corporation [3605] organized for a very small amount of money. They did not care to hire an attorney to incorporate their company, but still they wanted to be incorporated.

So, they asked me if I couldn't handle it, and I said, "Well, I suppose I can copy your Issaquah Creamery articles and send them in, and just change the name." And that is what I did. I changed the names and wrote out the same articles as the Issaquah Creamery Company, and they were filed. I received no compensation for that.

Q. Now, what was the scope of your work for Simonson and Forster?

A. It was running the general ledger and the

(Testimony of L. Hicks Taylor.)

system out there had been partially this way by a former owner.

Q. Exhibit—the exhibits in evidence here, and the testimony shows the receipts by Mr. Forster of $100 a month.

Mr. LeSourd: Strike that, please.

Q. (By Mr. LeSourd continuing): There are two checks in evidence in this case for 1946 and 1947, a $100 check to Mr. Forster in 1946, and a $100 check to Mr. Forster in 1947. Do you have any recollection of those checks?

A. No, I do not. [3606]

Q. Now, also, there are checks in evidence here of $100 a month which Mr. Forster received in 1948, and $100 a month which he received in 1949. Do you have any recollection of those items?

A. Yes, very well.

Q. Now, will you state what happened with regard to those $100 a month items?

A. Those $100 a month items were charged on the books of the Puyallup Creamery into the general expense account. Then at the close of the year I spoke to Mr. Forster about the $1200 and asked him whether that was to be a salary or what it was supposed to be. His remarks to me were that it couldn't be a salary, because they were losing money, and that he didn't see why he should pay income tax when he was drawing from the capital of a business, and he says, "You talk it over with Oscar. I think that Oscar has arranged some way to take care of it."

(Testimony of L. Hicks Taylor.)

Q. Who is Oscar?

A. Mr. Simonson. I apologize. Mr. Oscar Simonson was the President of the Puyallup Creamery. I might explain that Puyallup Creamery and Simonson and Forster are one and the same thing if anybody is confused on it.

So, I talked to Mr. Simonson about it. [3607]

Mr. Griffin: Just a moment, if the Court please. Objected to as hearsay.

The Court: The conversation?

Mr. Griffin: Yes. Simonson is dead.

Q. (By Mr. LeSourd): Just state what you did with regard to this item?

The Court: You can't repeat a conversation, Mr. Taylor.

Mr. LeSourd: Yes.

A. The amount withdrawn was credited against the expense account, and the analysis handed me by Mr. Simonson showed that he had purchased some equipment, and it was already paid for, and not paid for through Simonson and Forster. I adjusted the records of Simonson and Forster. There was $1100.00 showing as already owing to the company by Mr. Simonson, and the $1200 that had been paid to Mr. Forster. I restored the $1200 to profit, and charged the equipment account with the $1200 and the $1100, and Mr. Forster was to pay Mr. Simonson this money back into the corporation.

Q. (By Mr. LeSourd): Was this done after your conversation with Mr. Simonson?

A. Yes. [3608]

(Testimony of L. Hicks Taylor.)

Q. Mr. Simonson has now passed away, has he?

A. Yes.

Q. I will hand you Plaintiff's Exhibit 226, and ask you what that is.

A. Plaintiff's Exhibit 226 is a December 31st balance sheet, and profit and loss statement of the Puyallup Creamery. Also a work sheet of the same company.

Q. For what period?

A. December 31, 1948.

Q. Now, does that work sheet—that is in your handwriting, is it?

A. That is in my handwriting, yes.

Q. Does that work sheet reflect these matters you have just testified to?

A. It does. The adjustment column shows an item of $1100 debited to equipment and credited to a notes receivable account. $1200 debited to equipment and $1200 shown as a credit against the expense control account.

Q. Now, has the work sheet—your work sheet for the year 1949 been produced here and located?

A. I have not seen it.

Q. What is your recollection as to what that work sheet would show if it were found with regard to [3609] the $1200 that was paid to Mr. Forster in 1929?

A. That it would show that it was restored to profit.

Q. And what would it show as the offsetting entry, or manner in which it was handled?

(Testimony of L. Hicks Taylor.)

A. It was my recollection that it was debited to equipment, also.

Q. Now, handing you Plaintiff's Exhibit 220, Mr. Taylor, would you state what that is?

What is the book that I handed you?

A. It is the ledger of the Puyallup Creamery Company, Simonson and Forster, Incorporated.

Q. Now, there are entries in that ledger with particular reference to the equipment account that reflects the transactions? A. Yes.

Q. And what are those entries?

A. There is an entry of December 31, 1948, of $3,722.16. That includes the $2300 I mentioned a bit ago.

Q. And what about the next year, at the end of 1949?

A. There is an entry of $1,553.69 which includes the $1200 of 1949 to Mr. Forster.

Q. And did you check to see if this equipment [3610] was actually received by Simonson and Forster?

A. I don't believe I did. I didn't often go out to the plant.

Q. Why didn't you check, Mr. Taylor?

A. If I remember rightly, Mr. Simonson had it written on a slip, what was purchased.

Q. Did you make any practice in your accounting where you were working on the basis that you are here, to actually check equipment or other physical items? A. I did not.

(Testimony of L. Hicks Taylor.)

Q. Did you report the $1200 a year on Mr. Forster's personal income tax return?

A. I did not.

Q. Why not?

A. Because it was restored to profit of the Puyallup Creamery, and became a liability of Mr. Forster, or he had to return the money to the Puyallup Creamery.

Q. By "liability", what do you mean?

A. His liability to return the money to the Puyallup Creamery.

Q. What about the equipment?

A. Well, the equipment — the equipment was supposedly paid for either by Mr. Forster or Mr. Simonson, and he was going to collect from Mr. Forster.

Q. Now, turning to Arctic Gardens, Mr. Taylor, [3611] was that a separate corporation?

A. Yes, it was.

Q. When was it organized?

A. To the best of my recollection, in 1945.

Q. And it was owned by whom?

A. Mr. Brehm and Mr. Forster.

Q. And what business was it in?

A. It was a frozen food business. I believe, from conversation that I have heard, that they were going to do more expansion for businesses than the frozen food, but for some reason, it didn't develop. I have forgotten the particulars of it.

Q. Now, what were your duties and activities in regard to this company?

(Testimony of L. Hicks Taylor.)

A. If I remember right, I was secretary. I might have been treasurer, if the By-laws called for it. I believe I was secretary-treasurer, yes.

Q. What were your actual duties and responsibilities and activities in connection with it?

A. When it first started, they turned over all the books to me in my office, and I maintained all the records in my office.

Q. Well, to what extent was your office used in the operation of the business itself?

A. In the early stages, Mr. Angstad was a [3612] sales manager for them and, I believe, on a commission basis, if I remember correctly, and he did the selling and maintaining a freezer truck—a cold whatever you call them, a truck to handle frozen foods—and operated for somewhere close to a year, I believe, and it seemed that the bottom fell out of the frozen food business, and Mr. Angstad was released, and then either the Alpine or the Issaquah Creamery Company took over the delivery of it, of the frozen foods, and then all the duties, pretty nearly to the selling of it, was in my hands, and I handled it through my office.

Q. What compensation did you receive from this company?

A. My recollection is that it averaged about fifty dollars a month throughout the period.

Q. When Mr. Forster was on the stand, he pointed out two checks you received from Arctic Gardens in May, 1949, one for $150 and one for $50.17. Would you explain what these were for?

(Testimony of L. Hicks Taylor.)

A. The $150 was, as I remember it, for three months' compensation, and the $50 was the last month's compensation. The $.17, if I had of left it in the bank account, the bank would have taken it anyway, so that I just wrote the seventeen cents on my check and closed the account. [3613]

Q. How did it happen you didn't send the seventeen cents out to Mr. Forster?

A. Well, it would have cost me six cents to mail the seventeen cents to the two people, so——

Q. (Interposing): When was it that——

Mr. LeSourd: Strike that. It is time to recess, your Honor.

The Court: Ladies and Gentlemen of the Jury: We will now recess for noon. The Court calls your attention to the admonition given on similar occasions, and asks that you heed that admonition on this occasion. You will now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

The Court: Court will recess until 1:45.

(Whereupon, at 12:16 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:45 o'clock p.m. April 13, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the Courtroom.)

The Court: You may be seated.

(Testimony of L. Hicks Taylor.)

It is stipulated that the Jury and all Defendants are present in the court room? [3614]

Mr. Griffin: Yes, your Honor.

Mr. LeSourd: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): When we adjourned at noon, Mr. Taylor, we were discussing Arctic Gardens and you have mentioned in your testimony the fact that in the later years of Arctic Gardens, it borrowed money directly from the bank, or secured loans. Did that involve any work on your part with those loans?

A. Yes, I had to sign warehouse receipts, and sign them over to the bank, and every time we released merchandise, the warehouse would notify the bank, and I had to remit or go to the bank and clear the merchandise of the trust receipts. There were trust receipts that entered into it, and I had to release the trust receipts, and it required quite a number of trips to the bank.

Q. In 1949, Arctic Gardens, as I understand it, changed its name to Alpine Ice Cream Company, and acquired the Alpine Ice Cream business. Did you at that time have any discussion with Mr. Forster as to compensation?

A. Yes, I asked him if it would not be possible [3615] to continue the same compensation on into the Alpine Ice Cream Company and he approved it.

Q. On one of the returns for Arctic Gardens

(Testimony of L. Hicks Taylor.)

that has been introduced here, it bears this rubber stamp of yours:

"Prepared from the books without audit." or something to that effect.

Would you explain how that came about?

A. It is my opinion that I had many returns on the desk and reached over and stamped it and signed it without realizing that it was a return I was the principal of.

Q. How many returns would you prepare each year for various clients altogether?

A. Oh, I would probably have 20 or 30 at one time that I would be working on, the conclusions on.

Q. What is the fact as to whether or not those returns in general were prepared from information submitted to you? A. That is correct.

Q. They were generally so prepared?

A. Yes.

Q. Now, there has been testimony in this case with regard to Apex Farms. What was your relationship—first, was that [3616] a separate corporation? A. That was, yes.

Q. What was your relationship to that corporation?

A. I believe I was acting secretary and treasurer of that corporation also, and was—while the original idea was that I would handle the ledger out there, but Mr. Keck was doing a masterful job, and I couldn't see any reason for interrupting a good thing, so I worked with him, and he handled

(Testimony of L. Hicks Taylor.)

all of the mechanics of the business out there, after the consolidation.

You see, there was consolidation of the Blue Ribbon Dairy and Apex Dairy under the name of the Apex Farms, and it required quite a little accounting to consolidate the two under the one set of books.

Q. Did you receive any extra compensation for that consolidation?

A. No, I just received the regular fifty dollars a month out there.

Q. That was your compensation from Apex?

A. Yes, fifty dollars a month.

Q. I think Mr. Keck recalled it was sixty dollars a month, but that was not correct?

A. That is not so. Fifty dollars was the fee.

Q. To what extent did you participate in making out of the income tax returns for Apex Farms?

A. Mr. Keck, as a rule, completed the returns but I would go in and check them back with him, and check them over. We had one period that was audited by the Department, and they made a number of changes that had to be reflected in the returns, and my memory is that on that return, after working with Mr. Keck, that I signed the return as having prepared it and put my stamp on it.

Q. Is that the one testified to here earlier in this case? A. Yes.

Q. Turning now to Daisy Ice Cream: where was the Daisy Ice Cream Company, or store, located?

(Testimony of L. Hicks Taylor.)

A. It was on Florentia Street down near the Fremont Bridge.

Q. Was that a separate corporation?

A. The Daisy Ice Cream Company was an individual operation operated by Mr. F. L. Morris.

Q. And was it Mr. Morris that Mr. Forster acquired it from? A. That is correct.

Q. Do you recall approximately when Mr. Forster acquired it? [3618]

A. I believe in 1945, but I wouldn't say for certain on that. It kind of slipped my mind.

Q. It might have been '33—or, '4?

A. No, I don't think so.

Q. Irrespective of dates, had you been performing any service for Mr. Morris prior to the time Mr. Forster acquired the business?

A. Yes, I was keeping profit and loss and kept his general ledger.

Q. You were doing his accounting for him?

A. Yes.

Q. What did you do, if anything, in connection with the taking over of this business by Mr. Forster?

A. As I recollect it, I performed most of the operation of being taken over. There was some cash consideration, and a note given for the balance of the sale, and I believe that I performed all of the functions of that.

Q. You did all of the accounting work in that connection, did you?

A. Well, the accounting work, I did it; helped

(Testimony of L. Hicks Taylor.)

finish the sale for Mr. Morris and Mr. Forster.

Q. Now, when Mr. Forster took over, did he bring in Mr. Riig, who testified here earlier in this case?

A. Mr. Riig was the ice cream maker. Mr. Riig [3619] was the ice cream maker at the Daisy.

Q. Previously, was he there?

A. Whether he worked for Mr. Morris, I will not say for certain, but he was the ice cream maker that Mr. Forster hired there, I am sure.

Q. Now, was there any—was there a conversation between yourself and Mr. Forster and Mr. Riig at the Daisy store, shortly after Mr. Forster took over? A. Yes.

Q. What happened? What was said, and what happened?

A. Well, Mr. Forster had me pick up a book of deposit slips at the bank and, if I remember right, Harold Erickson sent in a daily cash report, a group of them, and Mr. Forster and I went to the Daisy plant, and I showed Mr. Riig how to make out a deposit, and how to make out these daily sheets.

Q. Now, at the time was there anything said as to what Mr. Riig was to do with the daily sheets?

A. The instructions was he was to fill out the deposit slips and send them in to the Peoples Bank, and the daily sheets were to be completed and mailed to Issaquah.

Q. Who gave those instructions?

A. Mr. Forster. [3620]

(Testimony of L. Hicks Taylor.)

Q. Did you have any conversation with Mr. Forster at the time he took over this Daisy Ice Cream Company as to the conduct of the future accounting work for this operation?

A. Yes, I asked him if he would like to have me continue on it, and he said he thought it would be a little easier to handle it at Issaquah, and have Mr. Erickson handle it down there.

Q. What connection, if any, did you have with the accounting matters of the Daisy at that time?

A. I had none.

Q. Did you receive any fee from the Daisy or for acting for the Daisy operation after that time?

A. I did not.

Q. Did Mr. Forster, after taking over that Daisy operation, ever ask you for a report on it?

A. Not to my recollection.

Q. Did you ever make out a report on that Daisy operation? A. I did not.

Q. Did you receive copies of Mr. Riig's report that you say was sent to Issaquah? A. No.

Q. What visit did you make after that time to the Daisy plant? [3621]

A. I had occasion to drop by there two or three times. I bought some ice cream, and our offices doing the work of the Daisy Dairy Store, a corner store, in the building, and it is my recollection that I went by and picked up some of their work a couple of times and stopped in and passed the time of day with Mr. Riig.

(Testimony of L. Hicks Taylor.)

Q. Did you ever go over Mr. Riig's records at any time after Mr. Forster took over?

A. No, I did not.

Q. Either with Mr. Forster present, or in his absence? A. No, I did not.

Q. From time to time, you testified, that you were an officer or secretary or treasurer, or both, of these various corporations. How did it happen that you became an officer of these corporations?

A. I believe usually to please Mr. Forster to fill out the staff of his organization, qualifying shares, and just to furnish signed papers, if necessary, as a secretary.

Q. Did you have any financial interest in any of these companies? A. I did not.

Q. Were you paid anything extra above your [3622] accounting fees for being an officer of these companies? A. No, I was not.

Q. Now, there was some testimony with regard to Taylor Brothers Insurance Company. Did you have any insurance business in the years here in question?

A. I own no interest in an insurance business. My brother had operated an insurance business.

Q. That was your brother Jack Taylor?

A. Jack Taylor, yes.

Q. And did you receive any part of the insurance premiums that he earned?

A. I did not.

Q. Mr. Taylor, what was the compensation that you received in the years 1945 through 1949 from

(Testimony of L. Hicks Taylor.)

all of the companies, businesses, that Mr. Forster was interested in—average?

A. I believe I figured it up. It is slightly over $50 a month.

Q. Does that include the few hundred dollars that was paid on your Washington Athletic Club bill? A. Yes, that includes everything.

Q. That is fifty dollars per month per business, per company? A. Yes.

Q. Would you state what the facts are with [3623] regard to the adequacy of your compensation paid to you during these years by these companies, taken as a group?

A. Well, they—taking an average, the pay was probably a little on the low side of being adequate, but it was all right, as far as I was concerned.

Q. Was it—did the adequacy of this compensation vary for the different companies, taking them individually?

A. Yes. Some required more time than others to place an average on them all.

Q. Now, would you have warranted the prevailing standards of fees during this period in doing further extensive work for these companies for the fees you were receiving?

A. No, I would not. There was not sufficient for that.

Q. Mr. Taylor, was Mr. George Kachlein ever your attorney? A. Yes, he was.

Q. When did he first become your attorney?

A. 1948.

(Testimony of L. Hicks Taylor.)

Q. And in what connection?

A. Income tax examination. [3624]

Q. Did you ever give Mr. Kachlein any authorization to represent you before the Bureau of Internal Revenue?

A. Yes, I gave him a power of attorney to represent me before the Treasury Department.

Q. During what period was this power of attorney in effect?

A. From some time in 1948 through 19—October, 1950.

Q. Did Mr. Kachlein thereafter become an attorney for Mr. Forster? A. Yes.

Q. When was he first employed as an attorney for Mr. Forster, so far as you know?

A. The best of my recollection I turned over the minute books of the Finstad and Utgard Company in September or October of 1949.

Q. What developed, Mr. Taylor, from the investigation of your own personal returns by the Treasury Department?

A. I was—I pleaded guilty to one count of tax evasion.

Q. Well, what developed first in that investigation? When that—when did you say that investigation started? [3625]

A. In August, 1948.

Q. And after it started did you check your own returns? A. I did.

Q. What did you find?

(Testimony of L. Hicks Taylor.)

A. I found that I was short in my reporting and called Mr. Kachlein for advice.

Q. What position did you take as to your shortage?

A. I took the position that it was not intentional, it was a carelessness, and that I did not feel that I had committed any fraud intentionally.

Q. You say that charges were filed; were they against you?

A. I don't know whether—when you refer to it as charges being filed——

Q. (Interposing): There was a complaint, or indictment, or information against you, was there, filed as an outgrowth of this investigation?

A. On March 2nd, 1950, Mr. Kachlein took me to Tacoma and apparently the charge was there to be offered to the Grand Jury, I believe. That is the way I understand it.

Mr. Obenour: If the Court please, we object to this testimony. The testimony that might [3626] be given, I believe, would follow strictly on the line of any conviction without details as to the manner in which it was handled.

Mr. LeSourd: Well, I wasn't trying to get the details, your Honor, but to lead up to this matter and I will withdraw that question, Mr. Obenour.

Q. (By Mr. LeSourd): Now, did you receive any advice from Mr. Kachlein as to how you should plead in your own case? A. Yes, on——

Mr. Obenour: That is objected to, if the Court please. It is strictly the matter of the prior record.

(Testimony of L. Hicks Taylor.)

The Court: I take it this is not in connection with the record particularly.

Mr. LeSourd: Oh, no, your Honor. We are not attempting to go into the prior matter except to give a general background of these events, is all.

Mr. Obenour: We withdraw the objection then.

A. (Continuing): On March 2nd when we went to Tacoma Mr. Kachlein advised me to plead guilty on one count. [3627]

Q. (By Mr. LeSourd): And what happened then in Tacoma?

A. I pleaded guilty to one count and was given a few days to come before the judge for sentence.

Q. And when did that occur; when did you come before the judge?

A. I was sentenced on May—on April 25, 1950.

Q. Did you commence serving your sentence at that time? A. Immediately, yes.

Q. And by "immediately", you mean that very day? A. That very day.

Q. When were you released finally?

A. I was released September 10, 1950.

Q. Mr. Taylor, do you recall the testimony of Mr. Marx in this case that on April 26, 1950, the day after you went to McNeil, Mr. Kachlein stated to Mr. Marx that if there were errors in Mr. Forster's returns they were undoubtedly due to your sloppy accounting?

A. I remember it very well.

Q. Did Mr. Kachlein advise you before you went to McNeil, or while you were there, that he [3628]

(Testimony of L. Hicks Taylor.)

was taking a position on behalf of Mr. Forster that was adverse to you? A. He did not.

Q. Did he advise you, either before you went to McNeil or while you were there, that there was any conflict between his representation of Mr. Forster and his representation of you?

A. He did not.

Mr. Obenour: If the Court please, we object to leading examination on this matter on the basis it would not be material to the matter here in issue.

The Court: I think the Court already ruled on that matter and would overrule the objection.

Mr. Griffin: That is the reason I remained silent. Your Honor ruled on this matter and I understood we disposed of it heretofore.

Mr. LeSourd: That was my understanding.

The Court: Yes, you may proceed.

Mr. LeSourd: Was my last question answered, your Honor?

The Court: I might advise the Jury in this connection so that you will understand: [3629]

Examination on this line was suggested earlier and there was some indication of objection and the Court considered the matter and advised counsel that examination into this very subject matter might be permitted and that if there was any special objection, of course, counsel may make it as to form of question.

Mr. Griffin: I assume our general exceptions to your Honor's rulings were reserved at that time?

The Court: Yes, whatever the record shows.

(Testimony of L. Hicks Taylor.)

You may proceed.

Now, Mr. Reporter, you may read the answer.

(Whereupon, preceding answer was read by the reporter.)

Q. (By Mr. LeSourd): The period that you were at McNeil Island, Mr. Taylor, did Mr. Kachlein continue to perform legal services for you?

A. Yes, he did.

Q. What were the nature of these services; what was the nature of these services?

A. He filed a protest with the Treasury [3630] Department on my tax liability sometime, I believe, in May of 1950.

Q. And did the—well, now, speaking of that tax matter, was that your civil tax liability you are talking about? A. Yes.

Q. Was Mr. Kachlein still handling this matter for you when you returned to Seattle September 10, 1950? A. Yes.

Q. How long did he continue to handle it?

A. Until October 27, 1950.

Q. Did he prepare other legal services for you while you were at McNeil Island?

A. Yes, he prepared a codicil to a will.

Q. And when did you sign that?

A. I believe that was in June of 1950.

Q. After returning from McNeil Island did you then find anything else with regard to steps taken by Mr. Kachlein as your representative while you were away? A. Yes.

Mr. LeSourd: Will you mark this?

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit Number A-74 marked for identification. [3631]

(Defendants' Exhibit A-74 marked for identification.)

Q. (By Mr. LeSourd): Handing you Defendants' Exhibit A-74, for identification, can you state what that is?

A. This is a memorandum for file given to Mr. Benedict and Mr. Slater, two men doing accounting work in my office. It is dated June 28, 1950.

Q. How did you receive it?

A. It was turned over to me by Mr. Slater, if I remember correctly.

Q. It bears whose signature, Mr. Taylor, or what initials?

A. It bears the initials of G. F. K.

Mr. Obenour: We object, if the Court please, as not properly identified.

The Court: I will look at it when Counsel have finished.

Mr. Griffin: Subject to the general objection to this line of testimony I have no objection to this exhibit and I am willing to stipulate this is a—that G. F. K. is George F. Kachlein—memorandum to Mr. Taylor's office.

Mr. Obenour: We will withdraw objection.

Mr. LeSourd: I will offer it, your [3632] Honor.

The Court: There is no objection then?

Mr. Griffin: No objection.

Mr. Keesling: No objection.

The Court: A-74 is admitted.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-74 admitted in evidence.)

Mr. LeSourd: May I read it?

The Court: When I say "no objection," that is no specific objection.

Mr. Griffin: No, your Honor.

Mr. LeSourd: May I read it?

The Court: You may read it.

Mr. LeSourd: "Memorandum for File.

"Re: L. Hicks Taylor.

"Mr. Benedict and Mr. Slater . . ."

Q. (By Mr. LeSourd): By the way, who are Mr. Benedict and Mr. Slater?

A. They were men associated with me in my office in the accounting business.

Mr. LeSourd: "Mr. Benedict and Mr. Slater contacted me Wednesday afternoon, June 28, with respect to the question as to whether or not collections made for work performed subsequent to May 1, [3633] 1950, should be divided two-thirds to the accountant and one-third to Hicks Taylor.

"As a temporary arrangement pending Mr. Taylor's return, it was agreed that collections on all accounts for services rendered subsequent to May 1, 1950, would be retained 100% by the accountant and those accountants who used the office of L. Hicks Taylor & Company would, upon Mr. Taylor's return to Seattle, work out an arrangement whereby they would make reasonable compensation for the use of said space.

"As this is but a temporary measure pending Mr.

(Testimony of L. Hicks Taylor.)

Taylor's return, all matters will be subject to adjustment upon his return.

"G. F. K."

Q. (By Mr. LeSourd): While you were at McNeil Island, Mr. Taylor, did you receive any letters from your wife indicating that Mr. Taylor—excuse me, Mr. Kachlein—was performing further legal services for you and herself?

Mr. Griffin: Object to the form of that question as leading and not the best evidence.

Mr. LeSourd: It is preliminary, your Honor.

The Court: The question is whether Mrs. Taylor——

Mr. LeSourd: (Interposing) Whether Mr. Taylor received letters at McNeil Island relating to legal services. A. Yes, I did.

The Court: It is a preliminary question. I think the objection may be overruled. It is leading, of course.

Mr. Griffin: That isn't the point, if the Court please. He puts in the witness' mouth the contents of the letter, the letter not being in evidence. I don't know if it will ever get in evidence. Did he receive a letter from his wife? Yes.

The Court: I think probably the question inasmuch as it contained the nature of the letter, objection to it might be sustained. If you wish to restate the question, you may, Mr. LeSourd.

Q. (By Mr. LeSourd): Did you receive letters from your wife while you were at McNeil Island?

A. Yes.

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit Number A-75 marked for identification.

(Defendants' Exhibit A-75 marked for identification.) [3635]

Q. (By Mr. LeSourd): Handing you Defendants' Exhibit A-75, for identification, can you tell us what that is?

A. This is a letter from my wife. I don't quite spot the date here. It is marked Tuesday evening.

Q. I don't believe it is dated. Do you know, in general, about when that was received?

A. I would think in August.

Q. You are not sure of the exact date?

A. No, I am not.

Q. But it was during the time you were there at McNeil? A. That is right.

(Whereupon, there was a brief pause.)

Mr. LeSourd: I will offer Defendants' Exhibit A-75.

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial; self-serving.

Mr. Moriarty: I join in the objection.

Mr. LeSourd: If your Honor please, of course, the proof of the facts therein stated will have to await Mrs. Taylor's testimony but I desire to show this as a part of Mr. Taylor's testimony to indicate the information that was brought to his [3636] attention and being the basis of his reliance during this period on Mr. Kachlein.

Mr. Griffin: That doesn't change the objection to the document.

(Testimony of L. Hicks Taylor.)

(Whereupon, there was a brief pause.)

The Court: The Court will sustain the objection at this time, Mr. LeSourd.

Mr. LeSourd: We have a series of these letters, your Honor, all of which I will have identified by this witness and all of which we think are material at this time for this same purpose, which is one of the items outlined in my memorandum to the Court to indicate the basis for Mr. Taylor's reliance on Mr. Kachlein in leading up to a later series of events.

The Court: As I understand, these letters are offered primarily to show Mr. Kachlein was representing Mr. Taylor.

Mr. LeSourd: That is right, all this series now deals with that. That is correct. That is, primarily to show that Mr. Taylor had received this information. The fact that he received the information is relevant at this time.

The Court: Well, of course, he has testified he has. [3637]

Mr. LeSourd: Yes.

The Court: Now, it may be that later it could be material. I don't know that it would merely serve to verify his oral testimony.

Mr. LeSourd: He hasn't testified to the nature of the information furnished him. There was objection made along that line, that the letters were the best evidence, and I could ask him orally about each of these as to the information furnished to him, but here we have the letters which themselves

(Testimony of L. Hicks Taylor.)

speak for what information was brought to his attention.

The Court: The sole purpose is that he received letters and would serve to indicate that Mr. Kachlein was representing him?

Mr. LeSourd: Was continuing, yes.

The Court: But I don't know what the objection may be. If you wish to ask a further question about letters received here, you may do so, and if objection is made the Court will have to rule on it but at this time the Court will sustain objection to the letters for that purpose.

Mr. LeSourd: Well, your Honor, I will have all these identified in turn.

Mr. Griffin: Separately? [3638]

Mr. Moriarty: Can they be marked as one exhibit, Mr. LeSourd?

Mr. LeSourd: Yes, we can.

Mr. Moriarty: We have quite a bulk already.

Mr. LeSourd: Yes, that is right, we do.

The Court: They all serve the same purpose, Mr. LeSourd?

Mr. LeSourd: This group, yes.

Mr. Moriarty: I suggest they be marked 75-A, B, C, D, if you wish to go into that, all as one exhibit.

The Court: If marked as one they are not subdivided unless there is some distinction necessarily among the letters.

Mr. LeSourd: I think perhaps they can be sim-

(Testimony of L. Hicks Taylor.)

ply stapled. I have already asked questions about A-75.

The Clerk: Defendants' Exhibit Number A-76 marked for identification.

(Defendants' Exhibit A-76 marked for identification.)

Q. (By Mr. LeSourd): Mr. Taylor, handing you Defendants' [3639] Exhibit A-76, for identification, can you state what those are?

A. These are letters from my wife dated May 25th, and May——

Q. Let's refer to them by the first sheet and second sheet and give the date.

A. The first sheet at the heading is marked Thursday Night, May 15th; the second sheet is marked Sunday Night, May 28th, 1950. The third sheet is Tuesday evening.

Q. Is there, on that third sheet is there a date on the back of the sheet, a received stamp?

A. "Received June 10th, Federal Prison Camp." The next letter is dated June 15th; and the next letter is dated Wednesday Night, June 21st; and the next letter is Tuesday Night, August 29, 1950.

Q. These were all received by you while you were at McNeil Island? A. Yes, sir.

Q. Were you—what, if anything, were you advised by letters during the summer as to continuing legal services by Mr. Kachlein?

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial and not the best evidence and hearsay. [3640]

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: It is not hearsay, your Honor. It is offered to show that he received such advice.

The Court: Objection overruled.

A. I received letters from my wife informing me that Mr. Kachlein had.

Mr. Griffin: Just a moment, if the Court please.

The Court: Just a moment.

Mr. Griffin: That is the very basis for the objection.

The Court: The question is "yes" or "no" and he said "yes."

Mr. LeSourd: All right.

Q. (By Mr. LeSourd): And what information did you receive concerning this matter?

Mr. Griffin: Objected to as incompetent.

The Court: Objection sustained.

Mr. LeSourd: If your Honor please, I feel that the fact that he received this information—it is not offered by this witness as to the truth of the fact but this witness should be able to testify he was advised that Mr. Kachlein was continuing to act on various legal matters for Mr. and Mrs. Taylor [3641] as a basis for his belief.

The Court: He testified he received letters and he testified they were from Mrs. Taylor. I think that is as far as it can go. If it should develop that there is some dispute or challenge to that, I believe it may be possible that it may be material but beyond that—as a matter of fact, I don't believe there is anything competent or material in that correspondence——

(Testimony of L. Hicks Taylor.)

Mr. Griffin: (Interposing) If the Court please——

The Court: And, of course, it isn't the best evidence.

Mr. Griffin: Having read the one letter, I assume the others are the same.

Mr. LeSourd: You can read them.

Mr. Griffin: I am willing to stipulate that Mr. Kachlein represented Mr. Taylor down to October 27, 1950, at which time he called you to his office to represent Mr. Taylor.

Mr. LeSourd: I am certainly willing to show that stipulation, your Honor, as long as it is understood that by such a stipulation I am not in any way prevented the showing by proper testimony in this case. [3642]

Mr. Griffin: There will be no objection on my part to any questions to Mr. Taylor as to what Mr. Taylor knows, or to Mrs. Taylor for what she knows.

The Court: You accept the stipulation then?

Mr. LeSourd: With that reservation, yes, sir.

The Court: I take it any questions that are proper wouldn't be barred anyway.

Mr. LeSourd: Yes, very well.

The Court: The stipulation may show.

Mr. LeSourd: May I have this marked, please?

The Court: Is that another letter?

Mr. LeSourd: This is dealing with another situation, yes, sir.

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit Number A-77 marked for identification.

(Defendants' Exhibit A-77 marked for identification.)

Q. (By Mr. LeSourd): Handing you Defendants' Exhibit A-77, for identification, Mr. Taylor, would you state what that is? [3643]

A. This is a letter from my wife dated Thursday Night, August 17, 1950.

Q. Received by you at McNeil Island?

A. Received by me at McNeil Island.

Mr. LeSourd: While they are examining that I will ask a question:

Q. (By Mr. LeSourd): Was any information brought to your attention while you were at McNeil Island concerning steps which your brother Jack was taking? A. Yes, there was.

Q. And was that brought to your attention by this letter you have just identified?

A. That is correct.

(Whereupon, there was a brief pause.)

Mr. LeSourd: I will offer Defendants' Exhibit A-77, if the Court please.

Mr. Griffin: Objected to as incompetent, irrelevant and immaterial and hearsay and self-serving and the same objection as to the other letters in which I stipulated away the necessity for them.

Mr. LeSourd: This one, if your Honor please, is in a different category.

The Court: I am inclined to sustain the objec-

(Testimony of L. Hicks Taylor.)

tion but I might read it over and then hear [3644] from you at recess if you wish.

Mr. LeSourd: Yes, your Honor.

My next series of questions—I will go ahead and introduce these others and we can consider them as a series, if the Court please.

The Court: All right.

The Clerk: Defendants' Exhibit Number A-78 marked for identification.

(Defendants' Exhibit A-78 marked for identification.)

Q. (By Mr. LeSourd): Mr. Taylor, upon receiving information concerning certain steps being taken by your brother Jack, what did you do?

A. I immediately got permission to write an added letter to my brother.

Q. To your brother?

A. Well, I will correct it. My mail could only go to my sister for my brother and sister. We were allowed three letters a week and they must be addressed to the same party.

Q. Handing you Defendants' Exhibit A-78, I believe it is, would you state what that is?

A. That is my letter to Anna S. M. Taylor, my sister, on a business permit from the Island. [3645]

Q. What is the date of it?

A. August 21, 1950.

Q. What was the fact with respect to where your sister Anna lived and your brother Jack?

A. They lived together at 102 North Broadway.

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit Number A-79 marked for identification.

(Defendants' Exhibit A-79 marked for identification.)

Q. (By Mr. *Taylor*): Did you receive any reply to your letters? A. Yes, I did.

Q. Handing you Defendants' Exhibit A-79 for identification, I will ask you what that is.

A. This is a letter from my sister, dated August 24, 1950.

Q. Is that in reply to the letter——

A. (Interposing) That is in reply to the one I just spoke of.

(Whereupon, there was a brief pause.)

Mr. LeSourd: At this time I will offer Defendants' Exhibits A-78 and A-79, your Honor, and we can present that matter at recess. It is in connection with the other letters.

The Court: All right. It is objected [3646] to?

Mr. Griffin: Yes, your Honor, same objection.

The Court: All right then, at this time, Mr. LeSourd, do you want to ask more questions or recess?

Mr. LeSourd: It might be better to recess and preserve the continuity.

The Court: All right.

Ladies and Gentlemen of the Jury:

We will now take the mid-afternoon recess and the Court calls your attention to the admonition and asks that you heed it now.

Before we do that, you have no more along that line?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: No, your Honor, it covers one set of facts.

The Court: The recess may be a bit longer than otherwise because of the argument on evidence.

You may now be excused.

(Whereupon, the Jury retired from the courtroom.) [3647]

* * * * *

The Court: You may proceed, Mr. LeSourd.

Q. (By Mr. LeSourd): Mr. Taylor, were you visited by Revenue Agents while you were at McNeil Island? A. Yes.

Q. When was this?

A. September 6, 1950.

Q. And who was there? Who came over?

A. Mr. Eppler, Mr. Marx and Mrs. Stokie.

Q. What did they want?

A. The first statement, I believe, that Mr. Eppler made was that from the records obtained to date that Mr. Hans Forster—Issaquah Creamery had displayed over one million dollars unreported income and wanted to know if I wanted to make a statement.

Q. What happened, Mr. Taylor, at that time? What did you do?

A. It rather floored me for the minute. I hadn't realized any such situation could have possibly existed; and I had discussed the visit without any knowledge from anybody—discussed the visit with Mr. Kildahl and he said——

Q. (Interposing) Who was Mr. Kildahl? [3659]

(Testimony of L. Hicks Taylor.)

A. I might explain: Mr. Kildahl is the probation officer at McNeil Island Prison Farm. Mr. Kildahl——

Mr. Griffin: Just a moment. We can't get into this discussion with Mr. Kildahl.

Q. (By Mr. LeSourd): Tell us just what the Agents wanted from you.

A. They asked me for a statement and they had all the books and records, I believe, of all these companies with them, a large pile of stuff with them.

Mr. Griffin: If the Court please, I think perhaps I am in error. Mr. Taylor is a Defendant here. I assume we reach the stage here where I am going to be clear about this thing. I am in error in objecting to that question as to what the parole officer said to him. If it is material to the Defendant's case, I think an instruction to the Jury that it is hearsay so far as the Defendant Forster is concerned——

The Court: (Interposing) I don't believe you are asking for it, are you?

Mr. LeSourd: No.

Mr. Griffin: He withdrew it on my objection.

The Court: The question is if you want to pursue it.

Mr. Griffin: So far as Taylor's defense is concerned. I am entitled to an instruction to the Jury as to the limitation.

Mr. LeSourd: I wasn't pursuing that anyway. I was trying to get at what was done.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: All right.

Q. (By Mr. LeSourd): You mentioned these papers and the records they had. Was anything said in regard to your working papers?

A. They told me that they had my working papers there. They had obtained them that morning, if I remember rightly.

Q. When you went to McNeil Island what did you do with your working papers?

A. Just before I left, probably a week or two before, I very carefully arranged all my working papers and ledgers of past years in cartons and did it very carefully so that working papers and ledgers would tie together and took them to the Issaquah Office of the Issaquah Creamery and placed them on shelves there so that they could be reviewed readily.

Q. Was anything said at that time when [3661] you took them there with regard to how long they would be there?

A. My understanding was——

Mr. Griffin: Just a moment.

Q. (By Mr. LeSourd): Was anything said?

A. They would be there ready for me when I returned.

Q. Did Mr. Kachlein ever communicate with you with regard to releasing your working papers to the Government? A. He did not.

Q. Did you ever advise Mr. Kachlein of your willingness to waive privilege in regard to them, Mr. Taylor? A. I did not.

(Testimony of L. Hicks Taylor.)

Q. Did you give any statement to the Agents on this visit?

A. I addressed Mr. Eppler in this way. I said, "Mr. Eppler, I would not care to make a statement without legal counsel present"; and he immediately said, "Who is your lawyer?"; and I said, "Mr. George Kachlein"; and the reply was, "Oh."

Q. And what happened after that?

A. I was so disturbed and mixed up on it I got up and left the room. [3662]

Q. Was any information brought to you prior to your leaving McNeil Island concerning an appointment with Mr. Kachlein?

A. Yes. My wife visited me—I will change that—my wife told me when I came out, the Sunday she picked me up that she had an appointment for Wednesday morning with Mr. Kachlein, the following Wednesday.

Q. Do you recall the date of that appointment?

A. That would have been the 13th; the morning of the 13th.

Q. Of what month? A. Of September.

Q. 1950? A. 1950.

Q. By the way, when you returned from McNeil Island, what date were you released?

A. The 10th.

Q. Of September? A. Yes.

Q. And when you returned did you find any communication from Touche, Niven, Bailey and Smart awaiting you?

(Testimony of L. Hicks Taylor.)

A. Yes, I found a communication dated September 8, 1950. [3663]

Q. Is that the letter that has been introduced in evidence here suggesting you come down and review their report? A. That is correct.

Q. Did you respond to that letter?

A. I did not.

Q. Why not?

A. I felt that if anyone should talk to me about this situation it should be either Mr. Kachlein or Mr. Forster personally, not some outside organization.

Q. Did you go to Mr. Kachlein's office on September 13, 1950? A. We did.

Q. Who was present?

A. Mr. Kachlein, Mrs. Taylor and myself.

Q. What occurred at that meeting?

A. We discussed many things but Mr. Kachlein was extremely anxious that my wife and I get started on our trip. We had planned a trip for one month.

Q. Was any mention made of the length of time you would be away?

A. The desire was that we be away for at least thirty days and was cautioned not to make a [3664] statement to the Revenue Agents.

Q. You say you were cautioned not to make a statement? A. Yes.

Q. By whom? A. Mr. Kachlein.

Q. Was any mention made by Mr. Kachlein of

(Testimony of L. Hicks Taylor.)

any conflict between his representation of Mr. Forster and of you? A. There was not.

Q. What happened after this meeting?

A. My wife and I returned to our home and prepared and left on our trip on Friday morning.

Q. Did the Agents try to see you before you left?

A. If my recollection is correct, on Tuesday the 12th Mr. Marx and Mr. Eppler were in my office in the Textile Tower; I believe in the morning—in the afternoon——

Q. (Interposing) This is the day before you saw Mr. Kachlein?

A. The day before we saw Mr. Kachlein. I might be wrong on the dates but I don't believe so, and I think in the afternoon—May I correct that date? I believe it was the day following we saw Mr. [3665] Kachlein that Mr. Eppler and Mr. Marx came to our home. I was in the basement and I believe our cleaning lady was making so much noise with the vacuum cleaner that nobody heard the door, or heard the bell. I happened to see the car back out of the driveway. That is the reason I knew they were there, and I had an appointment with my sister to go and see her and I understand that Mr. Marx and Mr. Eppler had talked to her just shortly before I got there.

Q. Now, when did you leave on your vacation?

A. The next morning at seven o'clock.

Q. And when did you return?

A. The 15th of October, 1950.

(Testimony of L. Hicks Taylor.)

Q. And what—did you talk to Mr. Kachlein then?

A. It is my recollection that I phoned Mr. Kachlein the evening of the 16th and he requested me to come to his office the next day and I believe on the phone he said something that he would either have to take my case or Mr. Forster's case.

Q. Did you go to his office then?

A. I went to his office the next morning and he explained his position and I approved the change. Mr. Kachlein wondered who I wanted to employ and [3666] I signified that I did not particularly have anybody in mind and he took the telephone book from the desk and referred to a number of different ones and I had had a previous recommendation of the gentleman I hired so that was the man that was called, Mr. LeSourd, and he came to the office of Mr. Kachlein and agreed to take my case.

Mr. LeSourd: If the Court please, subject to our understanding as to our right to recall Mr. Taylor for the purpose of the items which your Honor has tentatively ruled on, at this time, we rest.

The Court: You mean you complete your direct?

Mr. LeSourd: Not rest, we—they may examine, yes.

The Court: Yes. It is understood the Court will consider that matter at a later date.

Mr. LeSourd: Yes, your Honor.

The Court: Mr. Moriarty?

(Testimony of L. Hicks Taylor.)

Mr. Moriarty: Mr. Obenour will conduct the cross-examination.

Cross Examination

Q. (By Mr. Obenour): Mr. Taylor, do you recall the opening statement of Counsel at the start of this trial? [3667]

A. By "Counsel", may I ask——

Q. (Interposing): Do you recall the statement of Mr. LeSourd that there was a reasonable amount of undisclosed income of Mr. Forster and the Issaquah Creamery upon which there is a tax due?

A. Yes.

Q. Do you agree with that statement?

A. From the evidence here, it is apparent.

Q. Do you recall the statement of Mr. Griffin in the opening statement that there was tax due, and that it was only a question of who did it?

A. Yes, I remember the statement.

Q. Do you agree with that statement?

Mr. LeSourd: I will object to this testimony, your Honor. It seems to me it is not proper cross-examination.

The Court: Well, it would appear to be——

Mr. LeSourd (Interposing): It calls for a conclusion of this witness.

The Court: In what manner are you asking the questions, Mr. Obenour; whether he agrees with Mr. LeSourd or Mr. Griffin?

Mr. Obenour: Yes, sir; whether he agrees with Mr. Griffin's opening statement to the jury, at

(Testimony of L. Hicks Taylor.)

which time he declared it was only a question of who did it. [3668]

The Court: Well, the form of the question the Court will sustain an objection to. The matter may be in some other way material, but not proper in the way you are approaching it.

Q. (By Mr. Obenour continuing): Did you hear Mr. Holtberg's testimony as to his computations on exhibits 278, 279 and 280, the net worth computation of Mr. Forster, and the specific item computation of Mr. Forster, and the specific item computation for Issaquah Creamery Company and the taxes due thereon?

A. I remember the schedule, but I don't remember the amount.

Q. Do you want to refresh your recollection as to the amounts of those exhibits?

A. Well, do you want to question me on them?

Q. I will ask you——

A. (Interposing): Was that it?

Mr. LeSourd: Just a moment. If Counsel will ask questions and if he wants him to refresh his recollection, he can. It isn't material whether the witness wants to refresh his recollection.

The Court: We will proceed. What is the question now? Is there a question now? Is there a question pending, Mr. Obenour? [3669]

Mr. Obenour: Yes, sir, I believe there was.

Mr. Griffin: Do you want to refresh your recollection?

The Court: The Court will sustain objection to that question.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour): Do you agree with Mr. Holtberg's computation as to the amount of income tax due based upon the net worth computation of Exhibit 278?

Mr. LeSourd: Objected to, your Honor, as calling for the conclusion of this witness. There is no showing he has made a computation as to whether he would agree.

Mr. Obenour: If the Court please, he was present when the testimony was presented.

The Court: I will overrule the objection. I think he partially answered, but you may answer it, Mr. Taylor, if you care to.

A. I can answer that as far as the schedule as prepared by Mr. Holtberg, I think he did it correctly, but I don't know the residue of the figures, where they obtained all of them.

Q. (By Mr. Obenour): Do you agree that there was at least that much tax due to the Government as computed by Mr. [3670] Holtberg from the evidence presented here, both as to Mr. Forster and Issaquah Creamery Company, as shown by Exhibits 278, 279 and 280?

Mr. LeSourd: That is objected to as irrelevant, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): To your knowledge, is there a tax due the Government from the undisclosed income of Mr. Forster and Issaquah Creamery?

Mr. LeSourd: Same objection, your Honor, ir-

(Testimony of L. Hicks Taylor.)

relevant and immaterial. Whether or not Mr. Taylor thinks there is a tax due. There is no showing.

The Court: It doesn't make any difference now whether he thinks there is a tax due. Isn't it a question of what he thought at the time?

Mr. Obenour: I will ask if there is a conflict between the witness now and the computation Mr. Holtberg made, and if there is any difference, will he state——

The Court: (Interposing) What is the issue?

Mr. Obenour: The issue is whether there is tax due, and whether this man is a defendant.

The Court: That isn't the issue. The question is whether this defendant caused or had anything to do with filing a false and fraudulent statement [3671] in 1945 to 1949.

Mr. Obenour: Yes, sir; based on undisclosed income.

The Court: The Court will sustain the objection.

Q. (By Mr. Obenour): To your knowledge, Mr. Taylor, was there a plan between you, Mr. Forster and Mr. Erickson, to evade this income tax?

A. There was not.

Q. Did you work with Mr. Forster and Mr. Erickson to evade any part of this tax?

A. No.

Q. Did you discuss Mr. Forster's tax with him?

A. Yes.

Q. Did you discuss Mr. Forster's taxes with Mr. Erickson? A. That I cannot say.

Q. You cannot say? Why?

(Testimony of L. Hicks Taylor.)

A. Well, I am not sure that I ever did.

Q. Did you ever discuss the taxes due Issaquah Creamery with Mr. Forster? A. Yes.

Q. Did you discuss the taxes due Issaquah Creamery with Mr. Erickson?

A. I am not positive that I did. [3672]

Q. Did you discuss ways of saving money for Mr. Forster on his income taxes?

Mr. LeSourd: Well, I will object to that, your Honor. It is too general,—ways of saving money. I object to that as irrelevant and too general.

The Court: It is a very broad question.

Mr. LeSourd: Yes.

Mr. Obenour: Yes, sir.

The Court: He stated he discussed taxes.

Q. (By Mr. Obenour continuing): Did you discuss with Mr. Forster the tax consequences, on the division of the business of Alpine and Issaquah Creamery in 1940 and 1941?

A. I would say to some extent.

The situation was brought up more or less through Mr. Beadon Hall, if I remember right, and corporation rates were increasing quite naturally at that time, and it was thought wise maybe to disincorporate.

Q. Did you explain this to Mr. Forster?

A. It is my belief that we discussed it, yes.

Q. And, when you say "We discussed it", who is that?

A. I rather think Mr. Forster and Mr. Hall, and

(Testimony of L. Hicks Taylor.)

[3673] I, and then later Mr. Forster and Mr. Jones and I.

Q. Did you discuss the tax consequences of changing the name of Arctic Gardens to Alpine Ice Cream with Mr. Forster?

A. It is my opinion that I did. And, also, took him to Mr. Grill of Jones and Bronson, and it may have been that Mr. Jones sat in and it was discussed.

Q. And there was a tax problem concerned over this changeover of Arctic Gardens to Alpine Ice Cream?

A. It was thought it would be beneficial to take the profit or loss and work it through.

Q. Did you discuss the tax consequences with Mr. Forster as to why the money he received from Simonson and Forster should not be declared as income?

A. Yes, I discussed it with him.

Q. And what did Mr. Forster say about that?

A. Mr. Forster felt that a losing company, while he drew the money out, he didn't draw it out as a salary for services, that he would have to return that money at some later date to carry the company on, and he didn't feel that he should pay tax on something that was only a withdrawal, or a temporary withdrawal.

Q. Did you explain anything about the tax [3674] consequences of that at that time to Mr. Forster?

A. Well, I believe I did, yes.

(Testimony of L. Hicks Taylor.)

Q. Was it Mr. Forster's idea, or your idea, that a drawn capital should not be income?

A. Well, I think that both of us felt the same way. It wasn't one-sided.

Q. And then it was a draw of capital that you were discussing, and not payment for equipment you were discussing with Mr. Forster?

A. Well, the end result was equipment in the picture.

Q. Was the payment for equipment or salary as a drawn capital that you discussed with Mr. Forster?

A. I discussed the point of the withdrawal as not a salary item.

Q. Payment for equipment would not then be salary, would it? A. No.

Q. Pardon?

A. It wasn't paying Mr. Forster for equipment. The end result was the money coming back to buy equipment for Simonson and Forster.

Q. Was that money that Mr. Forster received from Simonson and Forster payment for equipment he sold Simonson and Forster? [3675]

A. No. You are misinterpreting what I tried to bring out. Simonson and Forster were buying equipment from a separate source, and to be paid for by both Mr. Simonson and Mr. Forster from their own personal accounts on this withdrawal that they already made.

Q. And the withdrawal had already been made by Mr. Forster prior to this?

(Testimony of L. Hicks Taylor.)

A. Yes, all during that year.

Q. And that withdrawal had been charged to expense? A. And restored to income.

Q. And it was that drawn capital, as to whether or not it should be taxable income, that you discussed? A. That is right.

Q. Did Mr. Forster understand the tax consequences of these matters?

A. It is my opinion he did.

Q. You made out certain financial reports for Mr. Forster, is that correct, on these corporations?

A. Yes, I tried to make good ones.

Q. Did you explain these to Mr. Forster?

A. I believe so, pretty generally.

Q. Did he understand your financial statements? [3676]

A. I always felt that he did.

Q. Did Mr. Forster understand bookkeeping?

A. I don't believe he could do a full set of books, but I think he understands bookkeeping to some extent.

Q. Would he advise his employees on bookkeeping matters?

A. I am not sure that I ever heard him, but I think he could.

Q. Did Mr. Forster understand the amount of income he was making from all these businesses?

Mr. Griffin: I object to the form of that question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you ex-

(Testimony of L. Hicks Taylor.)

plain to Mr. Forster what his income was when you prepared his tax returns? A. Yes.

Q. Did he appear to understand the amount of income he was making?

Mr. Griffin: Object to the form of that question.

The Court: Objection sustained. [3677]

Q. (By Mr. Obenour continuing): Did Mr. Forster say anything to you to question the amount of income he was making during these years?

Mr. Griffin: May that question be read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. You are referring to the individual operations?

Q. (By Mr. Obenour continuing): Yes, sir.

A. The Alpine Dairy?

Q. The income he personally was making?

A. I would make him a statement at the end of the year of the results of the ledger of Alpine Dairy which he had an opportunity to examine.

Q. Did he ever—he had other sources of income?

A. Interest and dividends.

Q. Did he make any statements to you asking information, further information, about the amount of income you were showing upon his tax return?

A. I don't think that he ever questioned it. He knew what it was made from.

Q. Did he ever question the amount of taxes [3678] that he was paying on this income?

A. I don't believe so.

(Testimony of L. Hicks Taylor.)

Q. Your job, as far as your employment by Mr. Forster, was to supervise the bookkeepers of these various interests of his; is that correct?

A. That is not so.

Q. That is not so? Did you have anything to do about the hiring of any of the bookkeepers Mr. Forster employed at these various interests?

A. I used to assist Mrs. Wilcox at the Alpine Dairy, but not at any of the other institutions.

Q. You did assist Mrs. Wilcox?

A. Yes, I used to assist her.

Q. Would you say you would supervise Mrs. Wilcox's activities?

A. Well, Mrs. Wilcox was the office manager, and we worked constantly together. I never felt I had any authority over her.

Q. You were paid fifty dollars a month from each of these various companies; is that correct?

A. That is correct.

Q. And those duties were what, generally speaking?

A. My principal duty was caring for the general ledger and preparing income tax returns and excise [3679] tax returns and various other duties that Mr. Forster would assign to me.

Q. You would receive this information for the ledger from the bookkeepers at the various businesses? A. That is correct.

Q. Mrs. Wilcox is one? A. Yes.

Q. And you would say you worked with her, and not supervising her?

(Testimony of L. Hicks Taylor.)

A. I didn't feel I had any authority over her.

Q. And that was from 1934, or '35 you first became acquainted with her? A. 1932.

Q. And did you understand the system Mrs. Wilcox was using? A. Yes.

Q. Were you satisfied the system was adequate?

Mr. LeSourd: I will object. It doesn't matter whether he was satisfied, and not proper cross-examination. We didn't go into details of the bookkeeping system.

Mr. Obenour: He made the statement he had no knowledge of anything wrong in any way, and I believe it would open up the cross-examination.

Mr. LeSourd: Whether this was a perfect bookkeeping system or whether he was satisfied is irrelevant to the question of whether he knew the items were properly entered.

The Court: The question put is objectionable, whether or not he was satisfied, is not material.

Mr. Obenour: All right, sir.

Q. (By Mr. Obenour continuing): Did you—you were employed at Issaquah, employed before Mr. Erickson came along, is that right?

A. Yes.

Q. Were you familiar with the bookkeeping system at Issaquah Creamery? A. Yes.

Q. Did you explain that system to Mr. Erickson when he was engaged?

A. I don't believe so. He succeeded Miss Neukirchen and Mrs. Zack, I think, had pretty well taught him the system.

(Testimony of L. Hicks Taylor.)

Q. Did you ever discuss the system with Mr. Erickson that he was following?

A. Oh, not to any great extent.

Q. Did you ever make any effort to determine [3681] whether or not Mr. Erickson was competent in performing the duties at Issaquah?

A. It was always apparent to me that he seemed to be doing his work very well.

Q. How was it apparent?

A. From the journals he would turn over to me all completed.

Q. Did you ever explain to him what you desired your journals,—or for your journals?

A. He gave me everything I asked for.

Q. At Finstad and Utgard, did you—were you familiar with the books that were the bookkeeping system used there at Finstad and Utgard?

A. To a greater or less extent. They were installed before I started in working for them. All I handled was the ledger.

Q. Did you go through them at that time to determine what system was used? A. Yes.

Q. Did you discuss this system with the bookkeeper employed at Finstad and Utgard?

Mr. LeSourd: Objected to, your Honor, as irrelevant and immaterial, and improper cross-examination. The matter of the keeping of the books at Finstad and Utgard is something irrelevant to this case, and we haven't [3682] gone it it on direct.

The Court: Objection overruled. The question

(Testimony of L. Hicks Taylor.)

here is whether he discussed with the bookkeeper the books?

Mr. Obenour: Yes, sir.

A. I don't know that I did.

Q. (By Mr. Obenour): Apex Farms, did you discuss the bookkeeping system used by Mr. Keck at Apex Farms?

A. When you say "discussed"—I worked with Mr. Keck in the consolidation of the Blue Ribbon Dairy and Apex Dairy before they were combined into the one set.

Q. I believe you said, did you not, that he was doing such an exemplary job you saw no reason to disturb it? A. That is correct.

Q. You were satisfied, at least as to Mr. Keck, that he was a competent bookkeeper?

A. That is correct.

Q. And yet you did not do this with the other companies?

A. No, because they weren't a new set-up that I worked on. The books were all set up in the other companies. [3683]

Q. Then how could you determine Mr. Keck was doing such an exemplary job if the system was not set up?

A. Because we were consolidating two companies under one, and the system that Mr. Keck was using was very satisfactory.

Q. What system?

A. His bookkeeping system.

(Testimony of L. Hicks Taylor.)

Q. Were they—after the consolidation or before, when he was employed by Apex Dairy?

A. Well, he had one side of the operation at Apex Dairy at the time, and in the consolidation, we used the bigger portion of the Apex Dairy System.

Q. Did you discuss the bookkeeping system used by the bookkeeper at Renton Ice and Ice Cream Company?

A. Well, I think that it was set up there. Ray Schneider was there when I set it up, I believe, in 1942, I believe, or some place in there.

Q. Did you discuss the bookkeeping system with Miss Buchanan and Miss Corliss at Simonson and Forster?

A. I think I did to some extent, yes.

Q. Did you understand the system used there?

A. Yes. [3684]

Q. Was there any company, or any interest, of Mr. Forster for which you were employed to keep the general ledger and prepare the tax return—was there any such company that did not have proper bookkeepers or bookkeeping systems?

A. I felt that they had systems that were O.K. in each of the companies.

Q. And the information that they prepared in each instance was given to you to keep the general ledger, is that correct? A. That is correct.

Q. And prepare the tax returns?

A. Yes.

(Testimony of L. Hicks Taylor.)

Q. Would you say then you supervised the bookkeepers of these interests?

A. I would say that I did not supervise them.

Q. But you did receive fifty dollars a month from each? A. That is correct.

Q. You had some twenty or thirty other clients, I believe, at the time that you were doing similar work for?

A. Yes, I maintained an office.

Q. Was there any other client that had that many interests, paying you each fifty dollars a month? [3685] A. No.

Q. Did you have any other client that paid you what has been reported fifty thousand dollars for your services during this period?

Mr. LeSourd: I will object to that, your Honor. There is no showing of fifty thousand dollars in this period. It was fifty thousand dollars in the twenty years.

Q. (By Mr. Obenour continuing): During 20 years?

Mr. LeSourd: If it is fifty thousand.

A. I could take eight and make seventy-five thousand out of some of them, too.

Q. (By Mr. Obenour): During this time that you had these twenty or thirty other clients, did you advise any of them on their personal financial matters, or the financial matters of their companies?

Mr. LeSourd: Objected to as incompetent and irrelevant.

(Testimony of L. Hicks Taylor.)

Mr. Obenour: He stated the duties he had during this time to the other clients.

The Court: I think it is immaterial what services he performed. Objection sustained as to other clients. [3686]

Q. (By Mr. Obenour continuing): Did you serve as financial adviser to Mr. Forster during your acquaintance with him?

A. I did not consider that I was Mr. Forster's financial adviser.

Q. Did you advise him on any of these companies?

A. I would not say that I advised him on any of them. I discussed them with him.

Q. What would be the purpose of the discussion?

A. Mr. Forster in most cases had his plan all worked out, and then would bring it to my office, or we would go and visit the people and look the situation over.

Q. Did you make a statement to Mr. Eppler and Mr. Marx on May 16, 1951, and again May 25, 1951, at this building?

A. I remember of being with them. The dates are a little vague.

Q. Do you recall making a statement to them that you were financial adviser, or serving in that capacity, before 1940 but after that time, you were not consulted?

A. That is a correct statement in this respect, [3687] that Mr. Beadon Hall had Mr. Forster right

(Testimony of L. Hicks Taylor.)

under his thumb, and we used to meet with him every time that I went to Issaquah to discuss how Mr. Forster was going to pay for the next shipment of milk that came in. Mr. Beadon Hall was the financial adviser. I sat in to produce the figures.

Q. Was there any of these companies that Mr. Forster acquired that you were not consulted on prior to his acquisition of them?

A. Any that I did work for after Mr. Forster made his first investigation, I sat in on and usually discussed them.

Q. You would not say your discussion was advice? A. I would not say that.

Q. You were admitted to the practice before the Treasury Department approximately twenty years, is that correct, Mr. Taylor?

A. That is correct.

Q. You are familiar with W—2 forms?

A. Yes.

Q. And the requirements? A. Yes.

Q. And what is that form?

A. A W-2 is the withholding form that is made out for employees of an organization where [3688] withholding and Social Security has been deducted, and shows the annual income, Social Security, and withholding tax, to be attached to the tax return 1040, that is filed for individuals.

Q. Are you familiar with Form 1099?

A. I am.

Q. And what are those, please?

A. 1099 is a form that a firm having paid

(Testimony of L. Hicks Taylor.)

rents, interests, commissions and some other things that they report to the Treasury Department for the information of the Department. They are an information return, is what they are called.

Q. You were fully aware of all the requirements, then, of the Treasury Department concerning these?

Mr. LeSourd: I didn't catch that question.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. LeSourd: Well, if your Honor please, to this point I will object—to that question and this line of questioning. I don't see the relevance or materiality to any of the issues in the case.

The Court: You say "concerning these", what are you referring to?

Mr. Obenour: W-2 and 1099, if the Court [3689] please.

The Court: Objection overruled as limited.

Mr. LeSourd: Limited to the returns in question, I have no objection. There is no W-2.

The Court: He testified to W-2 and to Form 1099. I think this is a concluding question.

Mr. LeSourd: Yes.

Mr. Obenour: Yes.

The Court: Do you have the question in mind, Mr. Taylor?

A. Might I explain? The explanation I made was my knowledge of those returns, not my duties of preparing those returns, in these companies.

(Testimony of L. Hicks Taylor.)

The Court: Just a moment, Mr. Taylor. The last question was as to your familiarity with the Treasury requirements as to form W-2 and 1099.

Mr. Obenour: Yes, sir.

The Court: Now, you might restate the question.

Q. (By Mr. Obenour): You understood what the Treasury Department required then as to the preparation of these forms?

A. If I were an employer, I would know what to do with those forms if I had people who came within their scope. [3690]

Q. Thank you. We have tax returns here, Exhibits 1 to 6, Mr. Forster, and for 1945 to '48 ten to fourteen, the returns of Issaquah Creamery Company, seventeen to twenty-one, Finstad and Utgard, twenty-two to twenty-four, Simonson and Forster, twenty-five to twenty-nine, Renton Ice, thirty and thirty-one, Apex, and 256 Arctic Gardens return. They are all signed by you. These are your signatures on all of them?

A. As far as I know, I think they are all there.

Q. And they were prepared by you?

A. Yes.

Q. And in each instance, you signed the return as preparing them and in some also as a corporation officer; is that correct? A. Yes.

Q. And those are all your signatures?

A. As far as I know. I think they all are. I have seen them pass by so many times, I am sure they are.

Q. And they all bear this stamp, to which you

(Testimony of L. Hicks Taylor.)

referred. What is the purpose, Mr. Taylor, of your putting this stamp upon these returns?

A. The purpose of the stamp is to notify the Treasury Department as to the assignment we had, or I [3691] had. It notifies the Department, on an individual return. It says, "Prepared from information furnished by the taxpayer without audit of the details contained therein."

That is a notice to the Treasury Department that an audit has not been made, or any verification.

Q. And the purpose, as far as you were concerned, then, would be to relieve you of liability of the truth of the return?

A. Reliability of the truth, did you say?

Q. Yes.

A. The figures furnished me, I have to assume, are the true figures.

Q. Then the purpose of this stamp would be then that other than from some change or alteration or error in the filling out of the blanks, you would have no responsibility then as to any of these returns?

A. When you say "an error," you mean a clerical error in computation?

Q. Well, what would be the effect of this stamp, so far as you see it, Mr. Taylor?

A. Anyone will make a clerical error in the computation of a tax return. The Treasury Department have calculators and they immediately make the correction and notify the taxpayer. [3692]

(Testimony of L. Hicks Taylor.)

Q. What is the effect of the stamp, then, as to the use of it by yourself?

A. It is to guarantee that the information shown in balance sheets, profit and loss statements, have not been audited or verified.

Q. So that it would relieve you of the responsibility to the Government as to the truth of these returns; is that what you say?

A. When you say "the truth of the returns," they are prepared from the information from the ledgers as accurately as possible that they can be prepared.

Q. When you say "books," you say your return is prepared without audit from the books and records of the client without audit of the details contained therein, and do you consider you are excluding the books you keep?

A. No, I am including the books I keep.

Q. Do you state what books you keep on this return?

A. It is prepared from the ledger.

Q. Does it show that on this stamp?

A. Well, naturally, the ledger is posted from the other books.

Q. Does it show on this stamp?

A. It says "Prepared from the books." [3693]

Q. Then your idea is that the books excludes the ledger that you keep, is that correct?

A. No, a ledger is a summary of the books.

Q. And what is the purpose, again, please, as

(Testimony of L. Hicks Taylor.)

to your use of this stamp to the United States Government?

A. It is a notice to Uncle Sam, or to the Treasury Department, pardon me, that the information has been furnished, and has not been audited as to detail.

Q. And that includes the companies in which you are an officer? A. Certainly.

Q. And in which you have worked with the bookkeepers in each instance in getting information?

A. The information is furnished me by the office force.

Q. And the tax return prepared by Mr. Keck of Apex Farms?

A. Mr. Keck prepared the income tax for Apex Farms from the records.

Q. And the stamp that you used then that it was prepared by you was not correct in the instance of Apex Farms?

A. I would just like to explain that a little.

Q. Was it, Mr. Taylor, or was it not correct as there used on the Apex Farms return?

A. I would not say it was incorrect, because I did have a little bit to do with the preparation of that return.

Q. Was it used on the other returns of Apex Farms?

A. It was not, because I did not have anything to do with them.

Q. You heard Mr. Keck's testimony that in each

(Testimony of L. Hicks Taylor.)

year he sent the tax returns to you to be signed and sent in. Do you recall that? A. Yes.

Q. Is that statement true? A. Yes.

Q. Did you use the stamp on the other returns?

A. No, because I did not prepare them.

Q. And Arctic Gardens, that return, is the stamp correct in that instance, too?

A. I rather think that was a mistake and an oversight.

Q. It was a mistake. Do you have recollection of that mistake, Mr. Taylor?

Mr. LeSourd: I didn't get that question.

A. I don't have recollection. [3695]

Mr. LeSourd: Just a moment.

The Court: Mr. Reporter, will you read the question?

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) Not until I saw the return here.

Q. (By Mr. Obenour): And now, your recollection is what?

A. I must have stamped it with other returns and signed it, and never looked at the face of it.

Q. You did not check the returns you submitted yourself?

A. I prepared the return, Mr. Obenour.

Q. You prepared the return? A. Yes.

Q. And you would prepare twenty or thirty returns and not sign or stamp them except all together?

(Testimony of L. Hicks Taylor.)

A. I wouldn't say that, but that is probably how it happened. I was surprised when I saw it here myself.

The Court: It is four o'clock, Mr. Obenour. Do you want to complete?

Mr. Obenour: Just one more question. [3696]

Q. (By Mr. Obenour): The other information contained then, in these returns, the corporate returns, and so forth, which is general information, and not pertaining to the actual amounts of money involved, that information was prepared by you, the other information in the returns other than the figures themselves?

A. What are you referring to?

The Court: Other information?

Mr. Obenour: Yes.

Q. (By Mr. Obenour): The details of the questions that are put in here as to where prior returns were filed and the incorporation data, and so forth. That was prepared by you?

A. That was taken from the previous returns.

Q. That was not taken from the books and records of the companies?

A. No, it never is.

Q. From what information?

A. The previous returns usually show where incorporated, and so forth.

Q. And you are responsible then for that information? A. I would say so, yes. [3697]

Q. And is that all, correct?

A. As far as I know, it is.

(Testimony of L. Hicks Taylor.)

Mr. Obenour: We would recess now, if your Honor please.

The Court: Ladies and Gentlemen of the Jury: We will recess now until tomorrow morning at ten o'clock, and the Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

(Whereupon, the jury retired from the court room.)

(Whereupon, at 4:04 o'clock p.m. April 13, 1954, a recess was had in the within-entitled and numbered cause until 10:00 o'clock, a.m. April 14, 1954.) [3698] * * * * *

The Court: You may call the jury.

(Whereupon, the jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Obenour.

Mr. Obenour: Yes, sir. [3703]

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination

Q. (By Mr. Obenour): As I understand it, Mr. Taylor, you say then that this stamp that you used

(Testimony of L. Hicks Taylor.)

was to put the Government on notice that you had not audited the books of the taxpayer; is that correct?

A. That was the general purpose of the stamp.

Q. Do you consider the ledger included in the books of any company? A. I do.

Q. And you were keeping the ledger of all these companies, weren't you? A. That is correct.

Q. And were you attempting to put the Government on notice that you were not responsible for the ledger you kept?

Mr. LeSourd: Objected to, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you give notice to the Government in any way that you were not responsible [3704] for the ledger you kept?

Mr. LeSourd: Same objection, your Honor. Argumentative.

The Court: Objection overruled.

A. The ledger was the record from which I prepared the tax return.

Q. (By Mr. Obenour): And those are included in the books?

A. The ledger is a summary taken from the books of a company.

Q. Did you give the Government any notice that you were not responsible for the information contained in the reports, the tax returns, as gathered from your ledger?

Mr. LeSourd: Objected to as argumentative.

(Testimony of L. Hicks Taylor.)

Mr. Obenour: There has been no answer, if the Court please.

The Court: It would appear argumentative. I will overrule objection on this one question.

A. If I understand the question correctly, I prepared the tax returns from a ledger that I kept. Does that answer your question?

Q. (By Mr. Obenour): No, sir. Did you give the Government any notice by this stamp, or otherwise—that you were [3705] not responsible for the contents of your ledger?

A. I would not think so.

Q. Now, you stated, I believe, that the use of your stamp on the Apex return was an accident; is that correct?

A. I didn't say it was an accident. I said I had worked some with Mr. Keck on that particular year, and I put the stamp on it.

Q. Which year was that?

A. I cannot remember. Whichever year it was on.

Q. That is the return in here?

A. That is my recollection of it, yes.

Mr. Maxwell: 31.

Q. (By Mr. Obenour): Exhibit 31, I believe.

Mr. Cox: Here is 31.

A. May I look at the return, Mr. Obenour?

Q. (By Mr. Obenour): Yes, just a minute. There are two returns, one for 1947 and one for 1949, Exhibits 30 and 31. Now, was that the year that you refer to?

(Testimony of L. Hicks Taylor.)

A. Examining this return, it is my opinion that this was typed in my office.

Q. Which return is that, please? [3706]

A. The Exhibit 30; that this return was typed in my office after working over the figures of Mr. Keck, and I signed it after working it over.

Q. You signed it after working it over, and that is how that one was stamped?

A. That is my recollection of it, yes.

Q. And then you did not have anything to do with the 1949 return, apparently? Is that correct?

A. I am referring to Exhibit A-31. If you will examine the typing, you will find that the typewriter used on A-31 is a typewriter at the Apex Farms.

The typing on Exhibit A-30 is a typewriter in my own office.

Q. You had nothing to do then with the return in 1949, Exhibit A-31?

A. Nothing to do with it, if I remember.

Q. Now, the Arctic Gardens return, you believe that was accidentally included with the others?

A. May I see the exhibit, please?

Q. Yes, certainly.

(Whereupon, there was a brief pause.)

Q. (Continuing) Exhibit 256, the Arctic Gardens return.

(Whereupon, Exhibit was handed to the witness [3707] by Mr. Obenour.)

A. I am looking at Exhibit 256. In the year 1946, it was necessary that all tax returns be ac-

(Testimony of L. Hicks Taylor.)

knowledged, and it called for an affidavit of those preparing the return.

I prepared the Arctic Gardens returns. Many of the records of the Arctic Gardens were kept at the warehouse, the freezer plant, and those records were worked by other people. I did not have a chance to check them in any way to determine their accuracy. When I prepared this return, there had been considerable sales in that year, and I felt that it required me to put my stamp on the return, and have myself acknowledged, even though I was secretary and treasurer of the corporation.

Q. And how about the stamp?

A. The stamp was put on for the same reason.

Q. The stamp was put on for the same reason?

A. Yes, sir.

Q. And then it was not an accident?

A. After examining this exhibit, I will say it was not an accident.

Q. Isn't it possible that either you or accountants employed in your office, particularly Mr. Fordyce Hall, rubber stamped these returns before they [3708] were filled out?

A. Not this particular return.

Q. Did you rubber stamp any returns before they were filled out?

A. Not as a rule. Sometimes maybe two or three, if you were going out to make a special return for somebody you would stamp them.

Q. And sometimes the returns were stamped with your stamp before you made out the return?

(Testimony of L. Hicks Taylor.)

A. Not intentionally that way. It might be——

Q. (Interposing) But they were?

A. Not often.

Q. But there were times?

A. I would say occasionally it was possible.

Q. You were also a Notary?

A. I have been a Notary for years, yes, sir.

Q. Did you put your notarial seal on the same way, just a bunch in a row, like the other stamp?

A. I would not say that, no.

Mr. LeSourd: Just a moment. Object to the form of that question.

The Court: Objection sustained.

Q. (By Mr. Obenour): How would you put your notarial seal on, Mr. Taylor? [3709]

A. Usually the party signed before me before I attached the seal.

Q. So that it would be no accident, your applying your notarial seal?

Mr. LeSourd: Your Honor, I will object to this line of questioning. It is completely irrelevant and immaterial to this case.

Mr. Obenour: I believe it would be relevant.

I ask that this be marked as Plaintiff's Exhibit next in order.

The Court: It doesn't appear now. If it is related to some matter——

Mr. Obenour: We are about to cover that matter now, if the Court please.

The Court: You may go into it and then——

(Testimony of L. Hicks Taylor.)

The Clerk: (Interposing) Plaintiff's Exhibit 285 marked for identification.

(Plaintiff's Exhibit No. 285 marked for identification.)

Q. (By Mr. Obenour continuing): I hand you Plaintiff's Exhibit 285 and ask if you can tell what that is, please, Mr. Taylor?

A. Plaintiff's Exhibit 285 is the tax return for 1948, the Apex Farms, Incorporated. [3710]

Q. Did you prepare that return?

A. I did not.

Q. Did you sign that return?

A. I did not.

Q. Is that your signature on the notarial seal there?

A. That is my signature as a Notary Public, yes.

Q. You did sign it as a Notary then?

A. I did, yes.

Mr. Obenour: I offer it at this time, if the Court please.

Mr. LeSourd: We will object to it, your Honor, on the grounds it is irrelevant and immaterial and not proper cross-examination. The relevancy doesn't appear at the present time, and I don't see where it is material to anything we have covered on direct.

The Court: Its relevancy isn't apparent, Mr. Obenour.

Mr. Obenour: If the Court please, we would refer the Court to the affidavit at the bottom of page one, the signature and the stamp.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: That is not the signature of Mr. Taylor you are referring to. [3711]

Mr. Obenour: That is exactly it.

Mr. LeSourd: Mr. Taylor's signature is only there as a Notary Public, as far as I can see.

The Court: It is his signature as a Notary Public you are referring to?

Mr. Obenour: That, and the stamp affixed there, if the Court please, by the signature on the affidavit.

The Court: You mean relative to information furnished?

Mr. Obenour: Yes, sir, and referring to the testimony of this witness as to the use of the stamp.

Mr. LeSourd: That stamp is over Mr. Keck's signature, as far as I can see on the return.

The Court: That is the way it appears.

Mr. Obenour: Yes, sir; but we would show it is Mr. Taylor's stamp, and even used on a return he did not sign in the affidavit.

It goes to the testimony of this witness on direct and cross examination on the manner in which these stamps were placed on the return.

Mr. LeSourd: If the Court please, I fail to see the relevancy of this matter at all. Mr. Keck was preparing these returns from the books of the taxpayer. Whether it is Mr. Taylor's stamp that was used [3712] or what it was, it seems immaterial to this case.

Mr. Obenour: It would be material how a return signed by Mr. Keck would bear a stamp of Mr.

(Testimony of L. Hicks Taylor.)

Taylor put on or after the signature along with the other returns he says that he was furnishing the Government.

The Court: It goes quite a ways. At this point, I will sustain the objection. If you want to argue the matter, the Court will hear from you.

Mr. Obenour: Yes, sir; can I examine the witness further as to the examination of the document?

The Court: I assume there is no question of identification, is there?

Mr. LeSourd: No, your Honor.

Mr. Obenour: I would establish the identification of the stamp, if the Court please.

The Court: If it comes in, it has to come in on the identification as to what it is, a return for Apex for 1948. Anything that may appear on there would only be admissible if introduced in evidence.

Q. (By Mr. Obenour): Did you ever put your stamp upon any tax returns which you did not sign, the affidavit of which you did not sign? [3713]

Mr. LeSourd: Objected to as immaterial and irrelevant.

The Court: It may be. I think that——

Mr. LeSourd: (Interposing) May I say, if your Honor please, on this matter: We have here a public accountant using a stamp which is a common practice in the profession, and using it where he prepared returns from taxpayers' records without verification of the details.

Now, it is immaterial, it seems to me, and com-

(Testimony of L. Hicks Taylor.)

pletely irrelevant if that stamp is used by other persons or in connection with other returns.

The Court: I don't think it is connected up. I will sustain the objection.

Q. (By Mr. Obenour continuing): Now, as I understand it, when you prepared Mr. Forster's returns, you would compute the profit for the—net profit for the year of Alpine Dairy, is that correct?

A. That was the principal item of his return, plus his salary at the Issaquah Creamery Company.

Q. Now, the Alpine profit would be computed from the ledger which you maintained?

A. That is correct.

Q. And then you would get the W-2 return from Issaquah [3714] for his salary?

A. As a rule, yes.

Q. And then you would ask Mr. Forster if he had any other outside income?

A. That is correct.

Q. And you knew he had no other W-2 forms on any of these returns?

A. I didn't know unless he would present them to me.

Q. Did you ever file any other W-2 forms other than the one for the Issaquah Creamery?

A. That was not my duty to prepare them. I attached the form with the return.

Q. Did you ever attach a W-2 form with any return you prepared for Mr. Forster other than the one from Issaquah Creamery?

A. I believe that is the only one, as I remember.

(Testimony of L. Hicks Taylor.)

Q. So that, to your knowledge, he had no other income from a regular salary?

A. That is my recollection, yes.

Q. And then he had a certain amount of other income which was dividends and interest given to you in one figure, I believe?

A. One or two figures, possibly three.

Q. There were no 1099's that you included in any [3715] of your returns, were there?

A. There may have been. I haven't any recollection of them right now.

The Court: What was the return?

Mr. Obenour: 1099, the form for other payments from corporations.

Q. (By Mr. Obenour): And you knew he had no draw, or taken no money out from any of these companies, principally Issaquah or Alpine, did you?

A. I believe that——

Mr. LeSourd: Just a moment, your Honor. I will object to that, including Alpine. It is not a company. I object to the form of the question.

Q. (By Mr. Obenour): He had a drawing account at Alpine and Issaquah?

A. If he drew, there was an account for him, yes.

Q. Would you check—well, was there a drawing account at Alpine Dairy?

A. If I recollect correctly, there was a number of income tax payments made for Mr. Forster, charged to his personal account in the Alpine Dairy ledger.

(Testimony of L. Hicks Taylor.)

Q. And that would be on the ledger you maintained? [3716] A. Yes.

Q. And that would be the only money, then, that he would have taken out of Alpine Dairy and cashed, to your knowledge?

A. That is correct.

Q. And you would check that drawing account before preparing your returns?

Mr. LeSourd: Well, if the Court please, I will object to that. It is an individual proprietorship. It is irrelevant and immaterial to this *case. Objection* overruled on that ground.

Do you have the question in mind?

The Witness: I am not positive.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. The drawing account always appeared, the ledger account appeared, so that I could pick off the income tax payment items from it, yes.

Q. (By Mr. Obenour): So that you would know he had received no other money in cash in that year from Alpine Dairy other than the payment for income tax? A. As far as I know, yes.

Q. And would you check the drawing account for [3717] Issaquah Creamery Company before you would prepare the Issaquah Creamery Company return?

A. If the ledger account showed any withdrawals I would have it before me.

Q. Would you check it?

(Testimony of L. Hicks Taylor.)

A. What do you refer to, by "check it"?

Q. Did you ever examine your ledger for Mr. Forster's drawing account to see whether or not he had received any cash from Issaquah Creamery charged to his drawing account?

A. The ledger would show it, if he did.

Q. Was there ever any draw by Mr. Forster from Issaquah Creamery in the years 1945 to 1949?

A. I don't believe I could say for certainty without seeing the ledger. It is my opinion there was not.

Q. So, then, to your knowledge, the only cash money that Mr. Forster would actually receive in any year from 1945 to 1949 would be the salaries he received from Issaquah Creamery, $18,000 a year, and the dividend and interest figure he would give to you? A. That is correct.

Q. So that would be the entire income?

A. That is right.

Q. And included in his tax return would be the net [3718] profit of Alpine Dairy, which did not mean cash to him, but money left in the company, is that correct? A. That is correct.

Q. So that, during the years 1945 to 1949, his returns, while they would show considerably greater income, he actually was receiving approximately $20,000 a year in cash to him?

A. I don't know whether I understand your question.

Q. The eighteen thousand plus dividends and

(Testimony of L. Hicks Taylor.)

interest would be about twenty thousand a year, average, that he would take out in cash?

A. As near as I can recollect, yes.

Q. And computing Issaquah Creamery Company's return, as I understand it, you would, through the years,—through the months in the year —get certain figures from Mr. Erickson from the books he kept and enter them on your ledger?

A. That is correct.

Q. And from your ledger, you would work on a work sheet and compute the tax return for Issaquah Creamery Company? A. Yes, sir.

Q. And do it in pencil and make your regular corrections [3719] that way?

A. That is correct.

Q. Would you ever go into the books of Issaquah Creamery Company that were maintained by Mr. Erickson for any matter in the preparation of the tax returns of Issaquah Creamery Company?

A. I did not audit the books of Issaquah Creamery Company.

Q. Now, in these other returns that you prepared, Apex—and I believe, Mr. Keck would prepare those returns, and you would go over them?

A. I would peruse them a little, yes.

Q. And Simonson and Forster and Finstad and Utgard, you would receive in a similar manner as Issaquah's figures, from the books and post to the ledger and then make the returns for those companies? A. That is correct, yes.

(Testimony of L. Hicks Taylor.)

Q. And you wouldn't go into the books for the preparation of those returns?

A. I would not audit the books, no.

Q. And Renton Ice and Ice Cream, you would get figures from Mr. Schneider and the bookkeeper?

A. Yes.

Q. And post to your ledger and make your return? [3720] A. Yes.

Q. And you wouldn't go into the books of Renton Ice and Ice Cream then for the preparation of your return? A. No.

Q. And you would prepare Mr. Schneider's return?

A. From his W-2's and information he furnished.

Q. And Mr. Egeness's return?

A. The same way.

Q. And Mr. Forster's daughters' return?

A. Yes, from W-2's.

Q. And what income were they receiving?

A. I do not recollect what their income was, at the present time.

Q. It was income they had received from Issaquah Creamery?

A. From Issaquah Creamery.

Mr. LeSourd: Just a moment. I will object to this as improper cross-examination, your Honor. We did not go into those matters on direct because they are not involved in this case, and not a part of the income that is alleged by the Government to have resulted in evasion. [3721]

(Testimony of L. Hicks Taylor.)

The Court: I don't know the purpose.

The Witness: It was income——

Mr. Obenour: Prepared by——

The Court: (Interposing) What is the purpose of it?

Mr. Obenour: The general affiliation of this man with the entire over-all picture of Mr. Forster and his enterprises, which also include the preparation of tax returns for individuals.

The Court: I will sustain the objection.

Q. (By Mr. Obenour): And finally, Arctic Gardens, which you have discussed, you also prepared from your books? A. Yes, sir.

Q. How would you make sure you would include all the income of Mr. Forster? Did you make any investigation at all? A. I did not.

Q. You simply accepted his ideas?

A. I accepted his figures.

Q. Now, this matter of the bank interest, you knew he had savings accounts?

A. I knew he had some savings account, or one saving account, at least.

Q. What saving account were you aware of?

A. The one at the Issaquah Bank.

Q. The one at the Issaquah Bank?

A. Yes.

Q. Is that his personal account?

Q. Yes, his personal savings account.

Q. Were you aware of its contents at that time?

A. No, not particularly.

(Testimony of L. Hicks Taylor.)

Q. Well, were you aware of one hundred thousand dollars of account 198 at any time?

A. Not as to any amounts, no.

Q. You never knew what the amounts were?

A. I never knew *that* any balances were.

Q. And Peoples Bank, did you know he had an account at Peoples Bank?

A. I have a recollection of him mentioning in 1948 or '9 that he had an account there.

Q. You had attended meetings regularly with Mr. Forster with Mr. Donaldson concerning loans and so forth?

A. I occasionally attended meetings. I never negotiated a loan or sat in the final negotiation on any loans.

Q. Did Mr. Donaldson and Mr. Forster ever discuss the account he had with Peoples Bank at the time [3723] you were present?

A. I haven't any recollection of it.

Q. Did they ever discuss any amounts he had on deposit at Peoples Bank?

A. I don't have any recollection of it.

Q. Did they ever differentiate between his personal savings account at Peoples Bank and the Alpine Account at Peoples Bank?

A. I am not sure I understand what you are——

Q. (Interposing) Did you know that the Alpine Dairy had an account at Peoples Bank?

A. Absolutely, yes. That was where this money was deposited from Alpine Dairy.

Q. You knew about that one?

(Testimony of L. Hicks Taylor.)

A. I knew they had the account there, yes.

Q. And you knew the balance in that account?

A. No.

Q. Would you know the balance of the account for Alpine Dairy that was kept?

A. The Alpine ledger would show the balance each month, yes.

Q. And you were aware, then, that Mr. Forster had his personal account in addition to that account?

A. A personal account besides the Alpine Dairy?

Q. Yes. [3724]

A. Are you referring to a savings account?

Q. That is right.

A. Yes, I knew that he had a savings account.

Q. Did you know he had an account at the Renton Bank? A. No, I did not.

Q. You knew Renton Ice Cream had an account there?

A. Yes, the Renton Company had their account.

Q. But you didn't know he had his account?

A. I did not.

Q. Did you know that he had an account at the Greenwood Seattle-First National?

A. I did not.

Q. You say you would get a figure that would be the interest when you would prepare the tax return?

A. He would furnish me the figure, yes.

Q. Do you remember Mr. Forster's testimony that when you would be at his place for lunch, he

(Testimony of L. Hicks Taylor.)

would give you interest figures from his Account 198 from time to time?

A. I am afraid that that is not so. Any interest figures he gave me, he gave me at the plant. I never discussed his affairs at home.

Q. Now, you say you thought that this was net [3725] interest?

A. That was the intention, yes, of his figures that he gave me.

Q. What do you mean by "net interest"?

A. Well, he probably paid interest out and received interest.

Q. Paid interest—pardon me, paid interest out for what?

A. Well, I wouldn't know.

Q. Well, why would you think he would pay interest out?

A. Well, he had borrowings. The Arctic Gardens loan was in existence.

Q. You were aware of loans that he made?

A. Not all of them, no.

Q. Weren't most of his loans made by the companies and he simply signed as an endorser?

A. That I could not answer definitely.

Q. Were you present at Peoples when they were negotiated?

A. I don't believe that I ever was present when a loan was actually completed at the Peoples Bank.

Q. Were you there when it was negotiated?

A. I have been there when there was discussion, but not negotiated. [3726]

(Testimony of L. Hicks Taylor.)

Q. All right. In these discussions, were you ever present when it was determined that the loan would be to the company with Mr. Forster simply signing as endorser, or security?

A. That I cannot remember.

Q. You cannot remember? A. No.

Q. There would be no interest charged to Mr. Forster if he was simply surety on a loan, would there?

A. He was endorser. Whatever company made the loan would pay the interest, yes.

Q. So that he would not pay that interest?

A. Not necessarily, no.

Q. And the only personal loan you say you can recall is the one to Arctic Gardens?

A. It is the only one I had personal contact with.

Q. And you say you still believe this was a net figure he was giving you?

A. That is correct.

Q. When did you discuss this with Mr. Forster as to the net figure of interest?

A. Usually at the time of preparing tax returns. [3727]

Q. Will you explain what you meant by "net interest"?

A. I meant his net earned interest.

Q. Did you explain that to Mr. Forster?

A. Well, I imagine that I did at the time. I just don't recollect.

Q. When did you explain this to Mr. Forster?

(Testimony of L. Hicks Taylor.)

A. You refer to "explanation"——

Q. (Interposing) When——

A. (Continuing) The taxpayer usually is informed enough about his interest earnings to give a man the correct net interest that he has earned.

Q. Did you discuss net interest with Mr. Forster?

A. It was not necessary for me to discuss net interest with Mr. Forster. I asked him to give me the interest that he had earned during the year.

Q. And interest that he had earned during the year would mean to you that the man was deducting the interest on loans?

A. That would be correct, yes.

Q. Why would Mr. Forster know this?

A. He should know it.

Q. Why? A. All taxpayers know it.

Q. All taxpayer know it? [3728]

A. They should, yes.

Q. And then, is it a fact on the tax returns aren't there places which differentiate interest paid on loans as apart from the other breakdown of interest which shows interest earned?

A. Yes, when you are analyzing the tax return, the interest that shows in the—on the face of the return is interest earned.

On page 3 of Form 1040, there is a situation that exists where there is a standard deduction. The standard deduction, if a man earns over ten thousand dollars, he is allowed one thousand dollars. If he has real estate interest—real estate taxes, donations and miscellaneous earnings, medical ex-

(Testimony of L. Hicks Taylor.)

penses, and they develop over one thousand dollars, he can take a greater deduction than the standard deduction.

That is interest on outside holdings, such as real estate. Not on any business loans of any type.

Q. Well, if he made these loans himself, they wouldn't be business loans, would they?

A. They would be business, as far as he is concerned.

Q. Mr. Forster always took a standard deduction? [3729]

A. They would be business as far as he is concerned.

Q. Mr. Forster always took a standard deduction?

A. It is my recollection that he did.

Q. How would you then know whether he had any personal interest or not that he paid out?

A. He probably would not give me any interest on real estate or chattel mortgages.

Q. Why not?

A. Because he probably didn't have any of those.

Q. Didn't have any?

A. I don't know. He might have had.

Q. Did you ask him?

A. I don't know that I did.

Q. Is there any place on the tax return that calls for a showing of net interest where that figure is entered?

A. I think on the first page of 1040 it shows

(Testimony of L. Hicks Taylor.)

interest on the face of a return? Do you have a copy of it? We can display it.

Q. Personal return?

A. Yes. May we have the return to look at it?

Q. Handing you Exhibit 1.

(Whereupon, exhibit was handed to the witness by Mr. [3730] Obenour.

A. Item 3, on the face of the return, opposite "your income", "Enter here total amount of your dividends, interest, including interest from Government obligations unless wholly exempt from taxes."

Q. "Unless already exempt from taxes". Now, does that mean deducting the interest you pay for a loan?

A. The intent of this return is for you to report your net interest received.

Q. That says "net interest"?

A. It says "interest".

"Enter here total amount of dividends and interest"——

Q. And on page 3, it says "Enter interest paid on loans"?

A. There is no descriptive point on the interest on page 3 of this return.

Q. And you still say Mr. Forster should know you meant net interest, and should deduct the cost of the loans from interest shown to you?

A. I certainly do.

Q. And you—calling your attention to page 2, item 12, what is that item, please, on Exhibit 3?

Item 12 on page 2. What is that item, please?

(Testimony of L. Hicks Taylor.)

A. That is the interest that in the operating of a business——

Q. (Interposing) What does it say, please?

A. Item 12, interest on business indebtedness.

Q. Now, how can you prepare the tax return for Mr. Forster by receiving a net figure, as you described, of the interest earned, deducting the cost of interest paid?

A. For the simple reason that he is supposed to be keeping some record of his interest received, and his interest paid out.

Q. He didn't give you those figures, did he?

A. He didn't give me an itemized list, no.

Q. How can you prepare the tax return for Mr. Forster without having a breakdown of interest received and interest paid out?

A. The return does not call for a summary of the interest received and paid out.

Q. There is an item for interest on business affairs—there was an item on page 3 for interest paid for personal——

A. (Interposing) May I explain a little bit of that? Mr. Forster operates the Alpine Dairy, which [3732] requires a capital structure. All businesses require a capital structure, and many times it is necessary in their operations to obtain money from banks to maintain a purchasing power. That interest is strictly a business interest of the Alpine Dairy. Mr. Forster's savings bank accounts, any loans he makes outside of Alpine Dairy, are his personal

(Testimony of L. Hicks Taylor.)

bookkeeping problem, and they come from his bookkeeping, not from the Alpine Dairy account.

Does that clear up the point of this interest on item 12?

Q. Well, the interest that Alpine Dairy would have would be included in the net profit figure, that you would include in the tax return?

A. And, if you will notice in this schedule attached to the return here, that the—that we have wages, rent, light, power, truck expense, office expense, advertising, industrial insurance, licenses, interest in the amount of $3,118.95.

Q. So that business interest then of Mr. Forster would not be included in the figure he would give you? A. That is correct.

Q. And then we come back again: what is the basis under which you believed Mr. Forster was deducting [3733] the cost of loans in the figure he would give you for interest?

What interest did you believe he was deducting?

A. The interest he was paying out.

Q. Do you know of any?

A. Not to my knowledge. I never checked into his personal affairs.

Q. Did you ever discuss net interest at any time with Mr. Forster?

A. That was always what I asked him for, his net interest.

Q. Did you explain net interest to him?

A. Well, I don't recollect ever going into great detail about it.

(Testimony of L. Hicks Taylor.)

Q. Does item 3 call for net interest, or interest?

Mr. LeSourd: Objected to as repetitious, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): Now, on Exhibit 279, that is the identified items of unreported income of Mr. Hans Forster, prepared by Mr. Holtberg, we have for 1945 additional dividends and interest, $10,808.41. You knew nothing [3734] about any of these items? A. I did not.

Q. Included here are personal loans. You knew nothing about those? A. I did not.

Q. Pickering loan.

A. I knew nothing of the Pickering loan.

Q. There is an item here, Arctic Gardens, $723.21. Did you know about that?

A. I knew about it. I wrote the check to him.

Q. Why wasn't it included?

A. I assumed it was.

Q. You assumed it was? A. Yes.

Q. Yet, you did not check?

A. I was not keeping his books.

Q. And then in 1946, we have an item of $6,194.62 additional interest. You knew nothing about that? A. I did not.

Q. 1947, $5,742.44 additional interest. You knew nothing about that? A. I did not.

Q. You declared in that year $1600 and it was actually, according to Mr. Holtberg's computation, [3735] $7300. Less than one-fourth declared in that year. You knew nothing about that?

(Testimony of L. Hicks Taylor.)

A. I did not.

Q. Similarly, in 1948, $4,641 undeclared interest. You knew nothing about those? A. No.

Q. And in 1949, $5,337.35 of undeclared interest, consisting of 2, 4, 6, 8, 10, 12, 14, 16, 18, 22, 24, 25 personal loans, savings account, Government bonds, and the Issaquah Creamery Company loan. You knew nothing about those?

A. Part of those must have been on the tax return, the Government bonds.

Q. You believe you had included the Government bonds?

A. If you would show me the exhibit, I might—or the tax return—it might clarify it.

Q. This exhibit shows you show on your return $3,418.

A. It is here then, and taken care of, yes.

Q. That includes the Government bonds?

A. That included the Government bonds, yes.

Q. You were aware of the Issaquah Creamery Company loan?

Mr. LeSourd: Just a moment. From whom to [3736] whom?

Q. (By Mr. Obenour continuing): The loan of Mr. Forster to Issaquah Creamery Company. I believe you prepared the loan, did you?

A. In what way?

Q. Physically prepared the note that represented the loan? A. I did not.

Q. You did not? Were you aware of the loan?

A. It would appear in my ledger if I was.

(Testimony of L. Hicks Taylor.)

Q. Were you aware that Mr. Forster loaned money to Issaquah Creamery Company in 1945 that was carried throughout the entire 1945 to 1949 period?

Mr. LeSourd: Objected to as repetitious and argumentative.

The Court: Objection overruled.

A. The ledger shows notes payable, I believe, of fifty thousand dollars. Am I right on the amount?

Q. Yes.

A. But unless I was told I would assume it was from the Peoples Bank.

Q. Did you know Mr. Forster loaned Issaquah Creamery Company fifty thousand dollars?

A. I cannot recollect whether he did or not.

Q. But you knew that there was a loan then of fifty thousand dollars?

A. The ledger showed a loan of fifty thousand dollars.

Q. That would be the interest, would it not?

A. To the what?

Q. To the bank. A. Yes.

Q. And interest would be paid then to Peoples —to the bank, whichever bank loaned the money?

A. Yes.

Q. Or to Mr. Forster? A. Yes.

Q. And in 1945, they paid $3600 to Mr. Forster. Did you know that? A. I did not.

Q. $1,850 in 1946. You didn't know that?

A. I have no information about it.

Q. $1,000 in 1947 and $3,000 in 1948, and $2,927

(Testimony of L. Hicks Taylor.)

in 1949. Was there testimony you prepared that note? Do you recall Mr. Forster so testifying?

A. Yes, but I did not prepare that note.

Q. You did not prepare that note?

A. No.

Q. Did you include the Directors' fees Mr. [3738] Forster received?

A. If he gave them to me, I did.

Q. You knew he was serving as a director?

A. Yes, I knew he was serving as a director.

Q. Would that be included in his net interest?

Mr. LeSourd: Objected to, your Honor.

Directors' fees wouldn't be interest. I object to the form of the question.

The Court: He may answer. It would seem that way, but the witness, I assume, can explain that.

A. He never explained to me that he had any Directors' fees, or ever gave me those figures separately.

Q. You never entered an item of Directors' fees?

A. I did not.

Q. So that the only way it could be was in this net interest? A. I presume so, yes.

Q. Is that included in your idea of net interest now? A. No.

Q. Why didn't you ask him about Directors' fees?

A. I asked him for all his income. [3739]

Q. You felt you had no duty above making this return out?

(Testimony of L. Hicks Taylor.)

A. A taxpayer has a greater duty to the accountant than the accountant has to the taxpayer.

A taxpayer knows what he earns, and should wilfully give the information to the accountant.

Q. And the accountant should prepare the tax return truthfully to the best of his knowledge?

A. That is right.

Q. And if you have knowledge that Mr. Forster also received Directors' fees, should that be included?

A. I did not have knowledge that Mr. Forster was receiving directors' fees.

Q. You knew he was a Director?

A. I did.

Q. And you knew Directors received fees?

A. And I knew that that bank for many years couldn't afford to pay directors' fees.

Q. You never asked him?

A. I didn't ask him, no.

Q. You didn't ask him then about any details, is that correct?

A. I expected him to prepare it for me.

Q. You took a figure of net interest and included in your mind directors' fees? [3740]

A. I don't know. I can't tell you that.

Q. Now, stock dividends—you included stock dividends in the tax returns from information you received at the end of the year from Jordan and Company, is that correct? A. Yes.

Q. And that information was supplied by Jordan and Company?

(Testimony of L. Hicks Taylor.)

A. Is I understand it, Mr. Jordan made him a complete copy which shows attached to the return.

Q. So that you included all the items of commercial stock that he owned?

A. I made an effort to report it correctly.

Q. And then, in these figures that we have gone into on 279, the interest on personal loans was not ever included then to your knowledge?

A. Why——

Q. (Interposing) In other words, we went into this additional figures of interest, do you recall?

A. Yes.

Q. And those consist of an addition to the commercial stock that paid dividends, and interest and returns of—there was not included then the interest on personal loans made by Mr. Forster?

A. Not to my knowledge. [3741]

Q. The corporation prepared 1099 to the Government for payment of stock dividends, do they not? A. Many do, yes.

Q. And those, then, go to the Government for comparison with the tax returns submitted by the taxpayer?

A. That is my understanding of it, yes.

Q. However, a private individual borrowing money from Mr. Forster would make no return to the Government for interest paid to Mr. Forster, would he? A. I doubt it.

Q. Why is it, then, that you included on the tax return of Mr. Forster only those items of interest and dividends of which the Government did have

(Testimony of L. Hicks Taylor.)

notice and did not include those of which the Government would have no notice?

Mr. LeSourd: Objected to. Conclusion and argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Why were only the commercial stock dividends shown which were reported to the Government? [3742]

Mr. LeSourd: Object to the form of that question. The testimony shows he asked for dividends and interest, and put down whatever figures were given.

The Court: I will overrule the objection.

The Witness: Would you repeat the question, please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. If my recollection is correct, Mr. Forster gave me his dividends from the Washington State Bank and Mr. Jordan listed the other dividends on his report and those were the ones reported on the return.

Q. (By Mr. Obenour): Why were not the personal loans included?

Mr. LeSourd: Objected to as repetitious, your Honor.

The Court: Objection sustained. You mean interest? You said "loans".

Q. (By Mr. Obenour continuing): Interest on loans.

(Testimony of L. Hicks Taylor.)

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): How about farm rental? You [3743] knew that Mr. Forster owned a farm?

A. Oh, yes; I knew he owned a farm.

Q. You knew he built a barn? A. Yes.

Q. It took about eight months to build, according to the testimony. Were you aware on this date that the barn was being built?

A. I was not.

Q. But you were aware it was built?

A. Yes, I had an invitation to the barn dance.

Q. How did you believe it was being paid for?

A. I didn't know.

Q. You had no knowledge how it was being paid for? A. I did not.

Q. Did you think it was Mr. Forster's personal property? A. Yes.

Q. Did you know—you knew Mr. Forster wasn't living on it? A. That is true.

Q. You knew it was being occupied by someone?

A. No, I didn't know that.

Q. You knew it wasn't vacant?

A. I didn't know that, either.

Q. You believe then Mr. Forster would have [3744] built a barn on a farm and leave it vacant?

A. That I don't know.

Q. You never heard it discussed?

A. No.

Q. You never picked the barn up for depreciа-

(Testimony of L. Hicks Taylor.)

tion purposes as a capital asset at any time, did you?

A. I didn't know anything about it.

Q. You knew he had a barn?

A. Yes, I was invited to the barn dance. Didn't I tell you?

Q. Why didn't you ask Mr. Forster about how it should be handled for depreciation?

A. My own experience with barns has always been they ran in the red, so that I don't imagine I gave it much thought.

Q. Ran in the red?

A. Yes. My farm situation runs in the red all the time.

Q. Do you have yours rented?

A. No, I have not.

Q. You knew where Mr. Forster's farm was?

A. I haven't the slightest idea where his farm was.

Q. You never heard it discussed? [3745]

A. Not from an income standpoint, no.

Q. But you did hear it discussed?

A. I was invited to the barn dance.

Q. And past the barn dance, that is all you know about the farm? A. Yes.

Q. And the fact it was paid for out of expenses of Issaquah Creamery never came to your attention at any time? A. It did not.

Q. And the fact that Mr. Forster received regular rentals, going as high as fifty dollars a month, never came to your attention at any time?

(Testimony of L. Hicks Taylor.)

A. It did not.

Q. And it never came to your mind that this farm should be rented, and depreciated off the rental?

A. Mr. Forster's personal assets never came to my attention.

Q. When did you find—when did you find out?

Mr. LeSourd: I will object as repetitious.

Mr. Obenour: I am just asking for a date, if the Court please.

The Court: Is that all you want, the date?

Mr. Obenour: Yes, sir.

A. I do not recollect. [3746]

Q. (By Mr. Obenour): It was prior to the time you made a statement to Mr. Eppler?

A. Oh, yes; within the past five years, I think.

Q. You did make a statement to Mr. Eppler, I think, on May 16, 1951, in this building, in the presence of Mr. LeSourd and Mr. O'Leary and Mr. Eppler? A. Yes, I had such a meeting.

Q. Now, I will ask you if you were asked this question, and if you made this answer:

"Did you know that Mr. Forster owned a farm on which he derived income?

"Answer: I did not."

Did you make that statement and answer?

A. Yes.

Q. When did you find out he did have this farm, before or after this statement?

A. After this statement.

(Testimony of L. Hicks Taylor.)

Q. You found out after this statement he had a farm?

A. Let me correct you. So far as income is concerned on the farm.

Q. And you knew, according to the statement [3747] you made to Mr. Eppler, you knew about the farm, but didn't know about the income?

A. That is correct.

Q. And now, you know about the income?

A. Well, it has been discussed here.

Q. Well, these eight corporations and companies that have entered into this trial: Apex Farms, you were secretary-treasurer of that company?

A. I was so acting.

Q. And Alpine Dairy was a private company and you were the accountant on that?

A. That is correct.

Q. Simonson and Forster, you served as Secretary-Treasurer?

A. I believe I was only acting secretary there.

Q. Renton Ice and Ice Cream, you were secretary-treasurer?

A. Acting secretary-treasurer.

Q. You were secretary-treasurer?

A. Acting, yes.

Q. There were no others? A. No.

Q. Arctic Gardens, you were secretary- [3748] treasurer?

A. I actually was secretary-treasurer of Arctic Gardens.

Q. Issaquah Creamery Company, you were secretary-treasurer?

(Testimony of L. Hicks Taylor.)

A. No, I was acting secretary.

Q. Daisy Ice Cream?

A. Never had any connection with Daisy Ice Cream.

Q. Alpine Ice Cream?

A. I was acting secretary and treasurer there.

Q. Daisy later became Alpine?

Mr. LeSourd: I object.

The Court: I didn't get the last question.

Mr. Obenour: Daisy later became Alpine.

Q. (By Mr. Obenour continuing): The business of Daisy was later taken over by Alpine Ice Cream?

A. The operating end of the ice cream business was taken over by the Alpine Ice Cream Company, Incorporated.

Q. And Alpine Ice Cream Company, Incorporated, you were secretary-treasurer there?

A. I was acting secretary-treasurer, yes.

Q. Finstad and Utgard, you were secretary-[3749] treasurer there?

A. I was acting in that capacity there.

Q. When you say "acting", there was none other than yourself as secretary-treasurer in any of these companies?

A. When I say "acting", I was only acting at the pleasure of the owner of the business. I had no stock interest and did not function as a secretary-treasurer, only for the signing of papers.

Q. You simply signed without knowing anything further than that?

Mr. LeSourd: Objected to as argumentative.

(Testimony of L. Hicks Taylor.)

The Court: Objection overruled.

A. I don't believe I get your answer clear, Mr. Obenour.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing): I usually looked the articles over that I signed.

Q. (By Mr. Obenour): All of the duties there were as secretary-treasurer in all of the seven corporations in which Mr. Forster had an interest, you performed?

A. Performing the operation of Treasurer of a [3750] company is a very broad structure. A treasurer of a corporation who is actually functioning as a treasurer receives somewhat the same compensation as the president does, and he handles all the funds and has charge of them, and I did not have charge of any of the funds of any of these corporations.

Q. Who was president of these corporations?

A. Mr. Forster was president of part of them.

Q. Did he receive any pay from any of them as president? A. Not always.

Q. Did he receive pay?

A. But he did have executives who did receive.

Q. Did Mr. Forster receive pay of any corporation as president?

A. He did from Issaquah Creamery Company, eighteen thousand dollars a year.

Q. Were there any others?

(Testimony of L. Hicks Taylor.)

A. I do not recollect, right now.

Q. So then the duties of president could not be measured by the pay received, could they?

A. And similarly the position of secretary-treasurer fits the same.

Q. Exactly; so that you could not measure your duties by the amount of money received? [3751]

A. Yes, I could.

Q. You could?

A. Because I did not receive any money as an officer.

Mr. Obenour: It is recess time.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-morning recess. The Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:02 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:15 o'clock a.m. April 14, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the courtroom?

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor. [3752]

The Court: You may proceed, Mr. Obenour.

Q. (By Mr. Obenour): These eight companies were all separate companies in themselves, weren't they? A. Separate operations.

Q. Separate operations; I think you said Mr. Forster was president, and you were secretary and/or treasurer and they had general managers in each of those companies, is that correct?

A. As I recollect, Renton Ice and Ice Cream Company, Mr. Schneider was president. Simonson and Forster, Mr. Simonson was president.

Q. Those two were also general acting managers of those corporations?

A. They were the general managers; and Mr. Egeness was vice-president at Finstad and Utgard, and general manager; Mr. Chapman, I believe, was either vice-president or president at Apex Farms, and general manager; and Mr. Forster then was president of Alpine Ice Cream Company, Incorporated, and Issaquah Creamery Company, Incorporated, and he owned the Alpine Dairy.

Q. Mr. Schneider had no business dealings at all other than the management of the Renton Ice and Ice Cream? A. That is right. [3753]

Q. He had nothing to do with the affairs of Simonson and Forster? A. That is right.

Q. Or any other company?

A. That is right.

Q. And he had no occasion to deal with either

(Testimony of L. Hicks Taylor.)

Mr. Egeness or Mr. Simonson or Mr. Chapman, or any of the others that you have mentioned?

A. Well, the Renton Ice and Ice Cream dealt with the Issaquah Creamery Company and, I believe, the Alpine Dairy, too.

Q. But Mr. Schneider had no business dealings personally, or otherwise, with any of the other men you mentioned?

A. No, each one was a separate operation.

Q. And, similarly, Mr. Egeness and Mr. Simonson, each with their own company?

A. That is correct.

Q. And not had any contact with other than themselves? A. Not any material contact.

Q. And similarly with Mr. Keck, his job was strictly confined to Apex Farms?

A. Keck was the bookkeeper at Apex Farms.

Q. He had nothing to do with any of the others?

A. No.

Q. The only contact was that Apex Farms bought certain supplies from Issaquah Creamery Company for which checks were written?

A. That is as far as I know, yes.

Q. And they sent milk checks for the difference between the regular price and the surplus price? They bought the milk from Finstad and Utgard and sent the check to Issaquah?

A. They were purchasing back and forth by each other—from each other.

Q. But that was the extent of their dealings; there was no personal contact between them?

(Testimony of L. Hicks Taylor.)

A. That is correct.

Q. None of these companies ever declared any dividends at any time, did they?

A. Not during my experience with them, no.

Q. Yet, from the evidence, it is true, is it not, that Mr. Forster got money from each one of these companies that was concealed?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): It is true, is it not, that [3755] Mr. Forster received money in some form from each of these companies?

A. He——

Mr. LeSourd (Interposing): Just a moment, your Honor. I will object to it unless the companies are specified.

Mr. Obenour: Each of the eight companies I mentioned.

The Court: I think it is clear he is speaking of the eight companies. Objection overruled.

A. (Continuing): He received money from Puyallup, which has been explained, and also from Renton which has been explained.

Q. (By Mr. Obenour): Didn't he receive money from each of these companies which have been gone into in the evidence, so far, in some form?

A. As far as the evidence is concerned, I believe that is so.

Q. And isn't it true, also, that this money that

(Testimony of L. Hicks Taylor.)

he received from each of these companies was not reported by you upon the tax returns?

Mr. LeSourd: I will object to that, your Honor, as assuming it should have been reported, whatever he received. [3756]

Mr. Obenour: The fact it was or wasn't, if the Court please——

The Court: (Interposing) Objection overruled.

A. I don't believe I understand your question on that.

Mr. Obenour: Would you read the question, please, Mr. Reporter?

The Court: You might read the question, Mr. Reporter, and, Mr. Taylor, if you do not understand it as phrased, you may so state.

The Witness: Yes.

(Whereupon, preceding question was read by the reporter.)

A. The schedule that Mr.—that the man presented, shows a lot of added income. Is that the question you are trying out?

Q. (By Mr. Obenour): Well, do you understand? Do you want me to rephrase it?

A. I wish you would.

Q. He did receive money from each of these companies——

Mr. LeSourd: (Interposing) Just a moment. I will object here, your Honor, unless—— [3757]

The Court: (Interposing) You are speaking about income now?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: Money in some form as shown by the evidence.

Mr. LeSourd: It isn't clear whether he is asking the witness to testify what he heard at the trial or knew at the time. The question is completely ambiguous.

Mr. Obenour: He stated that he knows he has received money in some form. I am attempting to go back and ask the witness if this same money was not reported.

The Court: I think we should clarify it so that we will know what the witness is talking about, as well as counsel, so that I will sustain the objection as to the form of the question. It is vague.

Q. (By Mr. Obenour continuing): You heard the evidence presented, Mr. Taylor?

A. Through the case, yes.

Q. And it is true, is it not, that Mr. Forster received money in some form from each of these eight companies, and we can elaborate it—we will, as we go on.

Mr. LeSourd: Objection. [3758]

The Court: I will sustain the objection.

Q. (By Mr. Obenour continuing): Did you take part in a plan of—with Mr. Forster and Mr. Erickson for the evasion of taxes of Mr. Forster and Issaquah Creamery Company?

Mr. LeSourd: Objected to as repetitious. He asked the same question yesterday.

Mr. Obenour: I will ask it again, too.

Mr. Griffin: May the question be read?

(Testimony of L. Hicks Taylor.)

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Griffin: I object to the form of that question, because it assumes a plan between Mr. Forster and Mr. Erickson.

The Court: That is the same question that was asked yesterday, in substance.

Mr. Obenour: Yes.

The Court: And the Court's sustained objection to it.

Mr. Obenour: I don't believe so.

Mr. Griffin: It was answered yesterday, but it didn't have this assumption in it.

The Court: It strikes me as being—are you asking [3759] whether he admits the guilt, or not?

Mr. Obenour: Yes, sir.

The Court: He pleaded not guilty.

Mr. Obenour: Yes, sir. I asked him if he took part in any plan, from the testimony he heard, did he take part in any way in evading the taxes of Mr. Forster and Issaquah Creamery Company.

The Court: I will sustain the objection.

Q. (By Mr. Obenour): Mr. Keck kept the books at Apex Farms, is that correct?

A. Yes.

Q. And I believe you testified that you determined that his system set up was—he was all——

Mr. Obenour: Strike the question.

Q. (By Mr. Obenour continuing): You testified, I believe, Mr. Taylor, as to the—as to Mr.

(Testimony of L. Hicks Taylor.)

Keck—how did you describe him?—his caliber of his work?

A. I have forgotten now what I said.

Q. But you did——

Mr. LeSourd: (Interposing) I will object to this as repetitious.

The Court: I don't know what you are getting at, Mr. Obenour. You may proceed. [3760]

Q. (By Mr. Obenour continuing): You determined the competency of Mr. Keck at the time Apex Farms was formed, did you not?

Mr. LeSourd: Objected to as irrelevant and immaterial and repetitious.

The Court: Objection sustained.

Mr. Obenour: If the Court please, it is preliminary to the testimony that he had yesterday—simply going back to that testimony. We can't necessarily show each one of these positions in the same continuous order. We will have to break apart, and at which time there will be questions put to refer back to the previous testimony.

The Court: Of course, you used language and say he determined the competency. You are assuming something testified to, and I don't think, if it is objected to——

Mr. Obenour: (Interposing) If the Court please, I asked whether he described the caliber of Mr. Keck, and he said he couldn't remember, and I was attempting to paraphrase his testimony.

The Court: I will sustain the objection.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour): Did you testify as to the competency of Mr. [3761] Keck? A. Yes.

Q. And how did you determine his competency?

Mr. LeSourd: Objected to as irrelevant and immaterial, and to the form of the question, gone over before.

The Court: You mean, how did he determine that? Is that material?

Mr. Obenour: Yes, sir. I am going back to the testimony of the witness yesterday. It is simply——

The Court: (Interposing) If he can explain it, the Court will overrule the objection.

The Witness: Do you desire me to answer?

The Court: Yes. I understand the substance of the question is how you arrived at or how did you explain your answer when you testified you found him to be competent?

A. Mr. Keck was quite a thorough dairy man and the system he had established at the Apex Dairy of an operation from six to ten routes seemed very efficient to me, and I didn't see any reason for changing the system.

Q. (By Mr. Obenour): Did you determine him to be competent? [3762] A. Yes.

Q. And did you determine that he was honest in his work? A. So far as I know.

Q. He reported everything that went into Apex Farms in the form of receipts, and also of expenditures? A. As far as I know.

Mr. LeSourd: Objected to as irrelevant, and

(Testimony of L. Hicks Taylor.)

assuming that the witness knows every receipt was reported.

Mr. Obenour: So far as he knows; within his knowledge, was the question.

The Court: I believe he answered the question.

The Witness: Yes.

Mr. LeSourd: I didn't get the answer.

The Court: Do you want it read?

Mr. LeSourd: I would like to have it read.

The Court: Mr. Reporter, read the answer.

(Whereupon, preceding answer was read by the reporter.)

Q. (By Mr. Obenour): Now, the money that Mr. Forster received from Apex Farms was in the form of diverted checks from Apex [3763] Farms to Issaquah Creamery; do you recall that evidence, Exhibit 142? Handing you Exhibit 142, which has been identified as checks of Apex Farms payable to Issaquah Creamery Company and which were deposited to the personal savings account of Mr. Forster, 198, did you hear that testimony?

A. Yes.

Q. And that was the form, then, of the money that Mr. Forster received from Apex Farms; would you say that that was correct?

A. If the checks were deposited.

Q. Yes, that was the testimony of previous witnesses. Is that correct, that that was the form of the money that Mr. Forster received from Apex Farms?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: I will object to the form of the question, your Honor.

He answered the factual matter that he heard the testimony.

The Court: Do you understand the question, Mr. Taylor?

The Witness: I am trying to determine what he is trying to ask me.

The Court: I suggest you might rephrase the question, Mr. Obenour.

Q. (By Mr. Obenour continuing): Exhibit 142 reports $25,048 of [3764] checks payable to Issaquah Creamery Company, which, according to the testimony, was deposited to 198.

Do you agree then that that was the money that Mr. Forster received from Apex Farms?

Mr. LeSourd: Objected to as irrelevant, what he agrees; immaterial.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Do you have any statement to make contesting the fact that Mr. Forster received these checks from Apex Farms?

Mr. LeSourd: Object to the form of that.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Can you make any statement concerning the receipt of those checks by Mr. Forster?

Mr. LeSourd: May we have that question read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: I think it was "did you."

Q. (By Mr. Obenour continuing): Can you make any statement now concerning the receipt of those checks by Mr. Forster?

Mr. LeSourd: Same objection. [3765]

The Court: Objection sustained.

Mr. Obenour: If the Court please, they went into the examination.

The Court: It isn't material whether he can make any statement.

Q. (By Mr. Obenour continuing): Did you have any knowledge that those checks were being deposited to 198? A. I did not.

Q. They were normal business checks, so far as you knew, in the affairs of Apex Farms?

A. As far as I know.

Q. Did you examine the books to determine that they were written?

A. I did not. I did not audit the books.

Q. Did you know that they were written at all?

A. I did not.

Q. Were W-2's, or 1099's, prepared for any of those checks? A. I have no knowledge.

Mr. LeSourd: Your Honor, I will object, assuming they should have been.

Mr. Obenour: Whether they should or should not have been, the question is, were there? [3766]

Q. (By Mr. Obenour continuing): If there was any, explain.

Mr. LeSourd: A question like this, your Honor, carries the implication that they should have been,

(Testimony of L. Hicks Taylor.)

and if he wants to ask whether W-2's should have been prepared for an ordinary business transaction of this sort, we can do so.

The Court: What was the form of this question, Mr. Reporter?

(Whereupon, the following was read by the reporter:)

"Q. Were W-2's, or 1099's, prepared for any of those checks?

"A. I have no knowledge.

"Q. If there was any, explain."

The Court: Do you wish to strike it?

Mr. Obenour: We move to strike—it was answered.

Q. (By Mr. Obenour): The other privately owned business of Alpine Dairy, Mrs. Wilcox kept the books at that concern?

A. She was office manager, yes.

Q. And was responsible for the bookkeeping?

A. Responsible for it, yes.

Q. I believe you testified from time to time you would have dealings with the manner in which she kept [3767] the books?

A. Mrs. Wilcox and I installed the system in 1931 that was used down there.

Q. Did you have occasion to determine whether she was competent?

Mr. LeSourd: Objected to, your Honor, as irrelevant and immaterial.

Mr. Obenour: If the Court please, the man testified that the accountant received figures from these

(Testimony of L. Hicks Taylor.)

various bookkeepers. Certainly it would be relevant as to whether or not he received figures that were prepared accurately.

The Court: Well, the objection is overruled. Do you have the question in mind?

The Witness: As I understand the question, he wanted to know if I thought Mrs. Wilcox was competent?

Mr. Obenour: Yes.

The Witness: (Continuing) ——to do her work.

A. I always felt that she was very competent to do her work.

Q. (By Mr. Obenour): Did you have any occasion to believe that she was not honest in her work?

A. I did not.

Q. So far as you know, no occasion did she not report any proper receipts of the company? [3768]

A. I had no knowledge of her not doing it.

Q. And her work was connected strictly with the bookkeeping of the receipts rather than the expenditures of Alpine, is that correct?

A. Might I explain the Alpine a little bit?

The Court: Get the question. Do you have the question in mind, and then if you wish to answer, you may.

The Witness: Yes.

A. I answer the question "yes," but the Alpine Dairy was more or less like a branch. It operated the sales, and the acceptance of the revenues of the business, the receipts, all came to Alpine and were deposited in the Peoples Bank. The disburse-

(Testimony of L. Hicks Taylor.)

ments of that bank account were all made at Issaquah, like a branch institution.

Q. (By Mr. Obenour): Well, Mrs. Wilcox was responsible then for keeping track of all monies received by Alpine?

A. Monies, recording accounts receivable, and depositing the funds to the bank.

Q. And she did so to the best of your knowledge?

A. To the best of my knowledge, she did all of it.

Q. Mr. Erickson was responsible at the Issaquah office [3769] for the expenditures of Alpine Dairy, is that correct?

A. He was office manager at Issaquah.

Q. And under his supervision, all expenditures were made for Alpine Dairy?

A. So far as I know.

Q. And the records were kept at Alpine—the expenditure records of Alpine were kept under Mr. Erickson's supervision at Issaquah?

A. Yes.

Q. Now, there was testimony that, you recall, the Time Oil receipts chargeable to Alpine in the amount of $9,629—do you recall that testimony?

Mr. LeSourd: May I ask, your Honor, what counsel means by "chargeable to Alpine"?

Mr. Obenour: As I understand, there is a breakdown of the total receipts; some used by Alpine and some by Issaquah, and all distributed.

Mr. LeSourd: You mean income?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: It was distributed in the receipts, some part of it from the gasoline used by Alpine and for that by Issaquah Creamery Company, a breakdown of approximately $9,000 to $2,000.

The Court: Nine thousand to Alpine, is that what you are referring to? [3770]

Mr. Obenour: Yes.

Mr. LeSourd: Very well, your Honor.

Q. (By Mr. Obenour): You heard that testimony? A. I don't recall the amount.

Q. You heard that there was Time Oil receipts?

A. Yes, but I cannot recollect any amounts.

Q. Would this be properly entered on the books of Alpine of reducing the cost, or at least being considered income of Alpine?

A. If it was a rebate, it should have reduced the expenses of Alpine.

Q. Was this done?

A. That I do not know.

Q. According to the testimony, it was deposited directly to the account of 198. To your knowledge of the operation of Alpine Dairy, who would be responsible for this money being properly entered on the books of Alpine Dairy?

A. If the funds ever were in Mrs. Wilcox's hands, they went into the bank.

Q. And who would be responsible, from your knowledge of Alpine Dairy, that this money should be taken upon the books of that company?

A. Well, whoever received it. [3771]

Q. And if the testimony was that Mr. Forster

(Testimony of L. Hicks Taylor.)

received it, then you say it would be his responsibility that it should be reported?

A. It should have been reported to Mrs. Wilcox, so that it could be deposited.

Q. And similarly, there was testimony of the diversion of checks payable to Alpine Dairy in the approximate amount of $21,700 which, according to the testimony, were not recorded on the books of Alpine but went into account 198. Do you recall that testimony?

A. I remember something but it is not clear to my mind, the amount.

Mr. LeSourd: Excuse me. Which checks are these, may I inquire?

The Court: The checks aggregating twenty-one thousand?

Mr. Obenour: Yes, $21,700.

Mr. LeSourd: It is a little ambiguous.

The Court: I understand you are breaking this down, are you, Mr. Obenour?

Mr. Obenour: Yes, sir. That included Exhibits 66, 66-A, 67, 67-A, and broken down by years if you desire.

Mr. LeSourd: Which companies?

Mr. Obenour: These were checks payable [3772] to Alpine Dairy, which were diverted to 198.

Mr. LeSourd: From whom?

Mr. Obenour: Various drawers.

The Court: They are covered entirely by these exhibits, is that it?

Mr. Obenour: Yes, sir.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: If the Court please, Counsel is not a witness in this case. It is what the witness on the stand knows. We don't know whether Counsel's breakdown—there is no evidence of his breakdown. Counsel sitting at this table for three months don't know if his breakdown is correct.

I object to the form of the question.

The Court: Objection is sustained to the question. Now, Mr. Obenour is in the process of formulating another question. Is that it?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): We have one, two, three, four, five, six, seven, eight, nine, ten, eleven exhibits, all of which are a series of checks. For the purpose of saving time, it has been computed before.

Mr. Obenour: If they want to take the time now——

The Court: (Interposing) I think you should refer [3773] to the exhibits.

Mr. Obenour: Yes, sir.

Mr. LeSourd: And, if your Honor please, these are discount checks from various sources chargeable to Alpine Dairy.

The Court: Well, Mr. Obenour, if you will frame a question now.

Mr. Obenour: Yes, sir.

The Court: And then, if there is an objection, it may be made.

Q. (By Mr. Obenour continuing): You heard the testimony, did you not, pertaining to Exhibits

(Testimony of L. Hicks Taylor.)

66, 66-A, 67 and 67-A which were primarily discount checks that were charged as expenditures on the books of Alpine as being paid as discounts to customers, but which were in fact returned to Issaquah and then deposited in Account 198. Do you recall that testimony? A. Yes, I recall it.

Q. And do you recall——

Mr. Obenour: We can give the totals by months, or add them up.

Mr. LeSourd: That is all right. I didn't know what you were talking about. [3774]

Q. (By Mr. Obenour continuing): And we have the Northwest Basketball Tournament check included in 67, equipment sales included in exhibit 250, check of Arctic Gardens in exhibit 239, and 253, and checks to Cook and Grant, 124—$27,159 in my calculation.

You heard that testimony?

Mr. Griffin: Just a moment. I haven't heard that testimony. I object to the form of the question.

The Court: The form of the question is improper, Mr. Obenour, insofar as you include in it matters that aren't testimony—that aren't in evidence.

Mr. Obenour: Pardon?

The Court: The Court will sustain the objection. You have to reformulate it, if you wish to put it.

Mr. Obenour: I would ask the Court—the way it would be—to have this witness add that up. Would Counsel accept the figures?

(Testimony of L. Hicks Taylor.)

The Court: You want him to add up the amount of the checks?

Mr. Obenour: I would attempt to ascertain that —the total.

Mr. LeSourd: The totals of various categories were [3775] given on Exhibit 279.

The Court: Why don't you refer to the item 279, then? Is it all there?

Mr. Patten: Yes, sir; at least, much fewer figures to total.

Q. (By Mr. Obenour continuing): Handing you Exhibit 279, the computation of the net worth for identified items of Hans Forster, and referring to the sections of interest of Alpine Dairy of each of those years, do you see those figures?

Mr. LeSourd: You are referring to the item "B," business income?

Mr. Obenour: I believe it changes year to year.

A. Dividends and interest?

Q. (By Mr. Obenour): Referring now to business income, Alpine Dairy, item D of 1945, the testimony was, do you recall, that they were deposited to 198; do you recall that?

Mr. Cox: All of the items in "A" and "B"?

Mr. LeSourd: I will object to that question.

Mr. Obenour: No, that includes both of them.

Q. (By Mr. Obenour continuing): The checks received of Alpine [3776] Dairy, discount checks included in Item "D," and item "E" of 1946, of cash discount checks, sub-section "C," "D," and "E,"

(Testimony of L. Hicks Taylor.)

and "F," 1947, paragraph "E," sub-paragraph "C," "D" and "E."

Mr. LeSourd: If your Honor please, may I say this? If the object of Mr. Obenour is to get a total of certain items in this exhibit, if the Government will total them up and bring in the total, we can shorten time by agreeing to it.

The Court: Well, is it material that we have the total?

Mr. Griffin: If he will state what he is trying to prove, maybe we can agree to it.

Mr. Obenour: That was my first question, Counsel—it was the fact that $21,000 was not deposited to 198 and objection was made.

Mr. Griffin: The proper question is, if you want him to testify those checks were or were not deposited to 198—it has been stipulated since the beginning of the trial they were—what is the issue?

Mr. LeSourd: Furthermore, it would be what this witness heard at the trial.

Mr. Obenour: That was the question put to him, if he heard the testimony.

Mr. Griffin: That would be immaterial. [3777]

The Court: Objection to those were all sustained. What is the question now?

Q. (By Mr. Obenour continuing): From your knowledge, Mr. Taylor, of the operation of Alpine Dairy, whose responsibility was it that these books —that these checks they deposited to 198 should be recorded on the books of Alpine Dairy?

Mr. Griffin: Well, I object to the form of that

(Testimony of L. Hicks Taylor.)

question. Apparently he is using this man as an expert witness.

Mr. LeSourd: Furthermore, I will object because we don't know what checks he is talking about. There may be a difference. Some of the checks may have been at Issaquah, and some at the Seattle office. It is a little vague.

The Court: If the witness understands the question and can answer it, he may. And may offer an explanation, if he desires.

Yes?

Juror Number Seven: Is the jury supposed to know what the question is?

The Court: The presumption is that.

Juror Number Seven: It is hard for us to understand the question. I am lost in the question.

The Court: I think that is a matter that counsel should bear in mind in asking questions.

Mr. Obenour: Yes, sir.

The Court: I will ask the witness if you understand the question, Mr. Taylor?

The Witness: May I ask this:

As I understand his question, he wants to know who was responsible to see where these checks were deposited, if I heard his question correctly.

The Court: If you know.

A. I do not know.

Q. (By Mr. Obenour continuing): Did you have knowledge——

The Court: (Interposing) Just a moment. If the jury should be confused on some of these mat-

(Testimony of L. Hicks Taylor.)

ters and feel it is necessary to stop and ask a question and suggest a question be put, that is your privilege if you wish.

Juror Number Seven: I didn't know that.

The Court: Generally speaking, you can't do that or we would never finish, but if you feel there is something you want to know about, or can't understand, if you will indicate, and if it is related to the matter the witness is testifying about, we will do so, but we can't go on that way as a [3779] general proposition.

Q. (By Mr. Obenour continuing): Did you have knowledge that any of these checks entered into evidence were being deposited to account 198 and not properly handled on the books of Alpine Dairy?

A. I think I so testified that I did not.

Q. Do you recall the testimony of Mr. Eppler as to the expenditures, personal expenditures, of Mr. Forster, which were charged as the expenses of Alpine Dairy?

A. I remember his testimony, yes.

Q. Who was the person responsible for the manner in which those expenditures were charged, to your knowledge of the operation of Alpine Dairy?

A. Well, the office manager at Issaquah.

Q. And that was whom?

A. Mr. Erickson, I presume.

Q. Did you have any knowledge that any of these checks were being so charged as expenses?

A. I did not.

(Testimony of L. Hicks Taylor.)

Q. You did check the drawing account of Mr. Forster each of these years at Alpine Dairy?

A. I did not check the drawing account. My ledger account showed the amounts charged to Mr. Forster. [3780]

Q. And there were only the income——

A. (Interposing) Income tax payments.

Mr. Obenour: 217, 18, 19, 21, 22.

(Whereupon, documents were handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Simonson and Forster —there were two girls that kept the books there during the period 1945 to 1949, is that correct, Miss Corliss and Miss Buchanan?

A. I believe that is correct.

Q. You discussed the bookkeeping system with them, I believe you stated?

A. They were taught the work by the preceding girls, and if there was any problems, they generally discussed them with me.

Q. They did discuss problems with you?

A. To some extent, yes.

Q. And you received certain information from them which you posted on a ledger?

A. The journals were complete, and I posted them to the ledger each month.

Q. Did you determine that the information was accurate?

Mr. LeSourd: I will object, your Honor. [3781]

His testimony is already in that he took the figures from the books and made no audit or deter-

(Testimony of L. Hicks Taylor.)

mination of the assets.

The Court: It is cross-examination. He may answer. Objection overruled.

Do you have the question in mind?

The Witness: Could it be read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. I did not audit the journals. I accepted the figures as presented.

Q. (By Mr. Obenour): Did you have any occasion during the period 1945 to 1949 to find that their information was incorrect?

A. No, I did not.

Q. Mr. Forster received $100 a month from Simonson and Forster, generally, in the years of 1948 and '9, as I understand the testimony. Is that correct?

A. That—checks were paid to him, yes.

Q. Were you aware he was receiving that money? A. Yes.

Mr. Obenour: 221 and 222? [3782]

(Whereupon, exhibits were handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Handing you Exhibit 221 and 222, I believe you stated you had no knowledge of the first two $100 checks, on Exhibit 221?

A. That is correct.

Q. And the balance of these checks then are the checks paid monthly to Mr. Forster from Simonson and Forster? A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. (Continuing) In the years 1948 and 1949? When did the regular monthly payments begin?

A. February 24, 1948.

Q. Did you know as soon as those payments to Mr. Forster began?

A. I am not positive of that.

Q. Did you hear the testimony of the girls that they were—Miss Buchanan and Miss Corliss as to the manner in which they were instructed how to charge those checks on their books?

A. I have some recollection of it, yes.

Q. And do you have knowledge yourself of how those were being charged at the time?

A. If I remember correctly, Mr. Simonson asked [3783] me where to set up these checks, and I informed him that until Mr. Forster and he had determined what the purpose of the checks were, to place them in the expense column on the Simonson and Forster journal so that they would be picked up each month.

Q. Were they entered as wages as they went along?

A. They were not. They were entered in the expense column, and as I remember it, I made most of the distribution, and charged them into the general expense account.

Q. Then you did go into the books on this occasion? A. Just the one item.

Q. But you did go into the books kept by the girls of Simonson and Forster to make this one entry? A. Yes, I made the distribution.

(Testimony of L. Hicks Taylor.)

Q. Were there any other times you had occasion to go into the books of the bookkeepers you were supervising?

A. Not necessarily.

Q. But you did on this occasion?

A. I didn't go into the books. I made an analysis of a column, is all. They were all entered. [3784]

Q. And you made the entry?

A. I made the analysis of the one column, yes.

Q. And you entered $100 to general expense?

A. To general expense, and there are exhibits here that will display how I did it.

Q. Now, was the occasion of Mr. Forster's receiving this $100 when Mr. Simonson raised his salary from four to five hundred?

A. That is my recollection, yes.

Q. And after you determined that Mr. Simonson had raised his salary from four to five hundred, you went to Mr. Forster and told him about it?

A. I don't know that I officially told him. I mentioned, probably, that the firm was not doing so well, and that additional salary seemed a little out of line.

Q. But you did tell Mr. Forster, as soon as Mr. Simonson raised his salary from four to five hundred dollars?

A. I am not sure I told him at the time.

Q. If Mr. Forster so testified, would you say he was not correct?

A. I would say he was correct, that I told him, but when I told him, I wouldn't know. [3785]

(Testimony of L. Hicks Taylor.)

Q. Did you hear Mr. Forster's testimony as to that matter? A. I believe so, yes.

Q. And do you recall that he testified that when you found that Mr. Simonson had raised his salary from four to five hundred dollars, you so reported to him, and he went out and saw Mr. Simonson?

A. I heard that testimony, yes.

Q. Would you say that was correct?

A. Reasonably so, yes.

Q. And he did see Mr. Simonson and he did begin receiving $100 a month, is that correct?

A. Yes.

Q. And then, as I understand your testimony, you went to Mr. Forster and discussed this money that he was receiving at the end of the year?

A. At the end of the year, yes.

Q. And Mr. Forster stated that he did not see why he should have to pay tax upon it if it was a draw on capital, is that correct?

A. That is reasonably so, except that he felt that a losing corporation—they could not afford to draw salary from and would have to return that money to the corporation.

Q. He was receiving $100 a month? [3786]

A. It was never determined what the $100 a month was for.

Q. He was receiving $100 a month?

A. You have the absolute evidence right here.

Q. Will you just answer the question, please, Mr. Taylor; yes or no? A. Yes.

Q. And after the end of the year, you then had a discussion how it should be carried on the books,

(Testimony of L. Hicks Taylor.)

and he stated that he shouldn't pay tax on it; that is correct, is it not?

A. He felt he shouldn't pay tax on it, yes.

Q. And as a result of that, he instructed you——

(Whereupon, there was a brief pause while the air raid sirens sounded.)

Q. (Continuing) At the time Mr. Forster caused you to see Mr. Simonson, that he had a manner of handling this; is that your testimony?

A. Not a manner of handling it, that they had apparently some agreement among them, how they would handle it, between them.

Q. But you did then receive an analysis that you described as equipment?

A. A slip describing some of this, as I [3787] remember it.

Q. Do you have that slip?

A. No, I do not.

Q. What is your best recollection of what that slip contained?

A. It seems to me that, from memory, it was eleven hundred and twelve hundred dollars written on it.

Q. Anything else?

A. I do not recollect.

Q. Just two figures, eleven hundred and twelve hundred dollars?

A. As I remember it.

Q. Was there any explanation of the eleven and twelve hundred dollars?

A. Mr. Simonson explained it, yes.

(Testimony of L. Hicks Taylor.)

Q. Did you follow the explanation?

A. I followed the explanation.

Q. And what was this eleven and twelve hundred dollar figure?

A. As I recollect, the eleven hundred dollars was in notes receivable, due the company from Mr. Simonson and twelve hundred dollars was the amount paid Mr. Forster.

Q. Had Mr. Simonson received eleven hundred dollars from the company? [3788]

A. As I recollect, that loan was one that had been made a few years before, and was a declining balance of that moment.

Q. The company made a loan to Mr. Simonson for eleven hundred dollars years before? Will you explain that, please?

A. As I remember the transaction, about 1940 Mr. Forster and Mr. Simonson withdrew five thousand dollars apiece and gave the company notes for it, and then they were paying it back in different amounts, and there was eleven hundred balance, as I remember, still owing by Mr. Simonson.

Q. And was there a balance still owing by Mr. Forster?

A. To the best of my recollection, he had paid his up.

Q. Well, then, the twelve hundred dollars represented the amount Mr. Forster received monthly from the checks?

A. That is my recollection of it.

(Testimony of L. Hicks Taylor.)

Q. Then what did they have to do with equipment?

A. I believe I testified that Mr. Simonson said that this equipment had been paid for by him and was going to be—he was going to collect a portion [3789] of it from Mr. Forster.

Q. What equipment?

A. Well, equipment.

Q. Well, you have another two figures on there, and one is explained as being a loan in 1940 from Mr. Forster, and the other is twelve hundred dollars Mr. Forster received. What equipment are we talking about?

A. I am sorry I am confusing you. The figures were combined into twenty-three hundred dollars.

Q. All right, what did the twenty-three hundred dollars represent? A. Equipment.

Q. What equipment?

A. I am afraid I don't know the equipment of a dairy well enough to tell you what equipment.

Q. What could a loan from Mr. Simonson and money advanced to Mr. Forester have to do with any equipment?

A. If Mr. Simonson paid for $2300 of equipment that was not entered on the books, this item of accounts receivable or notes receivable could be transferred into equipment to offset the two items. Is that clear to you?

Q. When was this equipment given to — or [3790] purchased by Mr. Simonson?

A. During that period.

(Testimony of L. Hicks Taylor.)

Q. What period? A. 1948.

Q. Why was it not entered on the books at that time? A. It was on the books.

Q. It was on the books?

A. It was on the books, but not under the equipment account.

Q. What was it under?

A. $1200 was under general expenses, Mr. Forster; $1100, under notes receivable under Mr. Simonson.

Q. And you mean that money received by Mr. Forster was entered as equipment under general expenses in 1948?

A. I am afraid that from an accounting standpoint, that puzzles you.

Q. Yes.

A. I will go from the start of it. The $1200 that Mr. Forster had been paid, had been restored to profit and established as a receivable, for an asset.

Q. How was that done?

A. Of the Puyallup Creamery. It was done on the [3791] ledger of the company.

Q. That was a ledger kept by you?

A. That is right.

Q. And you made the entry?

A. I made the entry, and on my work sheet, it shows it very plainly, what was done.

Q. And this was included—this is the explanation of the $2300. Will you go ahead, please?

A. That is correct.

Q. Now, how did that become equipment?

(Testimony of L. Hicks Taylor.)

A. The closing of the account, from accounts receivable or notes receivable, and being credited to notes receivable and a debit to the equipment account.

Q. Doesn't it have to represent some physical equipment?

A. It does represent physical equipment.

Q. What physical equipment?

A. I don't know, because I don't know dairy equipment well enough to point to it.

Q. Now, you received a slip of paper with eleven hundred and twelve hundred on it, totalling $2300, so you take the $2300 out of expenses and change it over to equipment when that $2300 represents a loan from Mr. Simonson and money paid to Mr. Forster, is that correct? [3792]

A. Maybe, as I explained, that Mr. Forster's $1200 was converted into an asset of the Puyallup Creamery by restoring it to profit.

Q. Did that represent equipment?

A. I said it represented an asset.

Q. Is that equipment?

A. It was when it was finally transferred into equipment.

Q. Then it was equipment by means of your entry upon the ledger of the Puyallup Creamery?

A. That is correct.

Q. And the only reason $1200 to Mr. Forster represented equipment is because you made the entry?

A. I think you are drawing it a long way.

(Testimony of L. Hicks Taylor.)

Q. Yes, yes; will you explain how $1200 represented equipment?

A. Mr. Simonson paid for this equipment outside of the business, was my information. He paid out $2300. The assets on the books of the Puyallup Creamery showed that they had $2300 coming from Mr. Forster and Mr. Simonson in the amounts of $1100 from Mr. Simonson and $1200 from Mr. Forster.

Mr. Simonson said that those items were equipment, to transfer it from the notes receivable account to the equipment account. [3793]

Q. And this equipment, you say you know nothing about it at all?

A. I don't know what the equipment was that he purchased.

Q. How do you know then it was acquired in 1948?

A. That was the year the transaction took place.

Q. How do you know it was acquired in the year 1948?

A. Because of the year of the transaction.

Q. That was the year you made the entry at the end of the year?

A. That is right, and that was the year of the transaction.

Q. How do you know it was the year of the transaction?

A. Well, Mr. Simonson gave me the figures.

Q. Mr. Simonson gave you two figures totalling $2300? A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. And that represents equipment?

A. Because he said they purchased the equipment. I had no reason to dispute his word.

Q. This was not taken out of wages; it was taken [3794] out of general expenses?

A. I will explain.

Mr. Simonson, when he started issuing the check to Mr. Forster, said they had not determined the purpose of that check.

Q. What was that again, now? I am sorry.

A. They had not determined the purpose of the check.

Q. And it wasn't then—that was in February when this started? A. That is correct.

Q. And it took them from February to November to determine that those checks represented equipment, is that correct?

A. (Whereupon the witness laughed.)

Q. When did they determine that those checks represented equipment?

A. At the close of 1948.

Q. After Mr. Forster said he did not want to pay tax on that money?

A. It was the decision of the two.

Q. You were fully aware of it?

A. I was present, yes.

Q. How did you set up the depreciation rate on the equipment if you didn't know what it was?

A. The depreciation rate of most dairy equipment is fairly normal. There is nothing unusual about it.

(Testimony of L. Hicks Taylor.)

Q. How did you set up the depreciation, if you didn't know what it was?

A. About a ten per cent basis.

Q. So then you depreciated the $1200 Mr. Forster received at ten per cent?

A. I cannot say until I see the record.

Q. What were these entries that you made, Mr. Taylor, before this item?

A. Mr. LeSourd had a schedule "D" that we went over.

Q. 220, that is the ledger kept by you for Arctic Gardens? A. It isn't Arctic Gardens.

Q. Puyallup Creamery; will you show us where you made this entry at the end of 1948?

The Court: What is the number of that exhibit?

Mr. Obenour: 220.

A. There are two entries of equipment.

Q. (By Mr. Obenour): Will you hold it up so that the jury might see, also? [3796]

A. There is an entry of equipment of $3,722.16, which is composed of $1100, $1200 and $1,422.16, which made the total of $3,722.16, transferred from the work sheet that you saw me testifying from yesterday.

Q. Now, you made an entry then of $3700 which you say included the $2300 and another item. What was the other item?

A. That I do not recollect.

Q. But you do remember that the $3700 included $2300?

(Testimony of L. Hicks Taylor.)

A. I have worked it over here so many times I know what the figures are.

Q. But you only remember those two, the $2300 total?

Mr. LeSourd: I will object to that. He testified those figures came from the worksheet.

Q. (By Mr. Obenour continuing): Well, where did you get the figure for the work sheet, then?

A. Will you obtain that work sheet, and we will look at it?

Mr. Obenour: Do you know what the exhibit number is?

The Clerk: It is 12:15.

The Court: Should we recess now, Mr. [3797] Obenour?

Mr. Obenour: We might as well, yes.

The Court: Ladies and Gentlemen of the Jury: We will now recess for noon. The Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion.

You may now be excused until 1:45.

(Whereupon, the jury retired from the courtroom.)

(Whereupon, at 12:15 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:52 o'clock p.m. April 14, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Testimony of L. Hicks Taylor.)

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor. [3798]

The Court: You may proceed, Mr. Obenour.

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): I believe I had asked you if you could show me how you recorded this transaction in the ledger for Issaquah Creamery, Exhibit 220.

Mr. Cox: Simonson and Forster.

Q. (By Mr. Obenour continuing): Simonson and Forster, pardon me.

(Whereupon, document was handed to the witness by Mr. Obenour.)

Q. (Continuing) Now, would you show us, please, what entries you made to adjust for the equipment?

A. May I have the work sheet that you were going to have with this before lunch?

Q. Are you unable to tell from the books you kept what the entries are?

A. No, I am not.

Q. Well, do they correctly show in the books that you maintained what the entries are?

A. They show the item of $1100 and $1200 taken care of in a combined item of $3,722.16.

Q. What you are saying is an item of $3,722.16

(Testimony of L. Hicks Taylor.)

is entered in equipment for 1948, is that correct?

A. Yes.

Q. Is there any other entry that pertains to this in your ledger that you kept, Exhibit 220?

A. That pertains to that? Here is an entry for $1100 which eliminates the note receivable of $1100 owing by Mr. Simonson.

Q. What is the date of that entry of $1100 on notes receivable?

A. It is December 31, 1950.

Q. Where do you see the date December 31, 1950?

A. That is supposed to be "31." It looks like 11 more than 31.

Q. Is there any month given there?

A. No, no month.

Q. Is there any date given there?

A. It appears to be "11" and would be March, according to that.

Q. It would appear to be March 11th that the entry is made?

A. It would appear that way, but it was not made until the end of the year.

Q. And either the date is correct—rather, the date is wrong, and your recollection is wrong there?

A. My recollection is right, December 31st.

Q. Why would the date March appear, then?

A. Apparently in the rush I did things too fast.

Q. That is $1100 in an item, recording of a $1100 note receivable, is that correct?

A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. But that is included in your December 31st entry? A. An adjustment.

Q. Adjusting $3,722? A. Yes.

Q. Now, what is the balance of the $3,722; how is the balance of that figure handled in your ledger?

A. May I have the work sheet, please?

Q. Are there any other entries that you can read in your books without the use of your work sheet showing that entry of $3,722?

A. Yes, there is an adjustment to supplies here.

Q. Where is that, please?

A. That is entered in red, a reduction of the amount in $1,759.58.

Q. And that is where, please? [3801]

A. Right here and right there.

Q. And that is made after the last figure of supplies, column 5, for—what do you call this, expense control?

A. Expense control ledger sheet.

Q. This was kept by you?

A. That is right.

Q. And there was a $1,759.58 item subtracted from the total of column 5, supplies?

A. That is correct.

Q. Now, where was the other figure, then? I would like to have you show it on the books, if you can.

A. In other words, the books and this work sheet are a combination that must be used together.

Q. Then the ledger you keep does not show this entire transaction?

(Testimony of L. Hicks Taylor.)

A. It shows the entire transaction.

Q. But you have to use the work sheet yourself to find out what this entry is, is that correct?

A. I asked you for it.

Q. Well, would you please answer my question?

The Court: Mr. Taylor, he is asking you, is it necessary to use that?

A. It is not necessary. I might explain this——

The Court: (Interposing) I think that is all.

A. (Continuing) ——that you sometimes combine figures.

The Court: You, of course, may explain.

Mr. Griffin: While he is looking at that, may I inquire the year of the March 11th date?

Mr. Obenour: 1948.

The Court: Does that appear——

Mr. Obenour: (Interposing) Yes, sir.

The Court: ——on the book?

Mr. Obenour: Yes, on the sheet itself.

Mr. Griffin: Thank you.

A. (Continuing) On my work sheet. I have an entry of $1100 in the elimination of an obligation to Mr. Forster, or to Mr. Simonson, in notes receivable.

Q. (By Mr. Obenour): Where is that, please?

A. That entry is right here in the adjustment column to the credit of notes receivable.

Then I have an entry of $1100 to the credit—to the debit of equipment.

Q. Isn't that in the inventory column?

A. Well, this is the adjustment. It carries

(Testimony of L. Hicks Taylor.)

through on this whole thing. If you notice, the total [3803] comes across into equipment, and does not affect the inventory figure.

Q. Where is that, please?

A. Because of the lack of space here, it appears to be in inventory, but it is in equipment, and carried across here into this total.

Q. And then this $1100 is the equipment figure?

A. Yes, sir; carried into the total of a new balance of equipment.

Q. Although it shows in the inventory line?

A. Yes, because of the space.

Q. Then there is no entry in your ledger of that $1100? Well, that is the one you say reduces notes receivable in your ledger?

A. That is correct.

Q. And the $1200?

A. The $1200 is shown as a credit to expense control down here. Expense control is entered in one lump figure of $178,344.62, and as you come down here, you will find there are three adjusting figures opposite the expense control. There is an item of $1200 which are the amounts drawn by Mr. Forster. There is an item of $6,677.04 which is an equipment item to the credit of the expense control. There is an item of $1,759.58 to the credit of the expense control [3804] reducing that figure in the profit and loss statement to $168,770.70. In other words, all those items have been restored to profit.

Q. Now, that is an adjustment on your work sheet?

(Testimony of L. Hicks Taylor.)

A. On my work sheet, which is reflected in the ledger in some combined figures.

The Court: What is the exhibit number? Excuse me, a moment.

Mr. Obenour: Exhibit——

The Witness: (Interposing) I couldn't see it there.

Mr. Obenour: 226.

The Witness: I am reading from Exhibit 226, yes. The second page of Exhibit 226.

Q. (By Mr. Obenour): Now, that is your explanation of the $3,722 then as you use it on the work sheet. Where is the entry on your ledger of the $1200?

A. There is an entry here of $7,877.34 in this equipment column here, and there is $1200 shown up here as added into the equipment column here.

Mr. Griffin: And that is what, again, please?

The Witness: That is the $1200 paid to Mr. Forster. [3805]

Q. (By Mr. Obenour): Now, the last figure of any of these columns in your expense control is the total of all the entries you made throughout the entire year? A. That is correct.

Q. So this $7,877.24 is the total of all the entries that is in the equipment column?

A. That is right.

Q. And you make a figure, adding each succeeding month, is that it?

A. That is right; you bring it forward.

Q. What do you call that?

(Testimony of L. Hicks Taylor.)

A. That is bringing your monthly totals forward, accumulation of figures, month to month.

Q. Is that a footing?

A. Footing, that is correct.

Q. So that there is actually an entry in ink, which is that month's entry?

A. That month, yes.

Q. And the figure for the month shows the total?

A. Yes.

Q. And where is this $1200 included?

A. It is included in the grand total. I wrote it in there because of lack of space. It is in [3806] this grand total here.

Q. Included in this grand total?

A. Yes.

Q. This is $612?

A. Yes, that was sent in that month.

Q. And then each of these months are added, and then at the end, you came along and——

A. (Interposing) You transfer it out of the expense control account into equipment account.

Q. And where is your removal from expense control?

A. Right here, $7,877.34. It is a credit. This debit and credit column. That is in the credit column, reducing expense control.

Q. And you made no adjustment to wages in that year?

A. Yes, it would be made in an adjustment to wages, because an adjustment was made.

Q. Well, what was the adjustment to wages?

(Testimony of L. Hicks Taylor.)

A. There wasn't any wages. I beg your pardon, Mr. Obenour. There was no charge set up to wages. It was set up to the general expense account.

Q. Then you did not lower wages in the months of 1948? A. No, not at all. [3807]

Q. Do you have a paper and pencil handy there?

A. Yes, I do.

Q. Now, as I understand it, each one of these columns in your expense control, each month is the same—the month's entry is added to the previous month's total, and there is a footing which includes those two totals?

A. Yes, that is the way the book operates.

Q. Would you please add the figures, $26,098.98 and $2,600.95. What is your total, please?

A. $28,699.93.

Q. And would you please add $6,460.01?

A. Anything else?

Q. $325.35. A. Yes?

Q. What does that total? A. $35,485.29.

Q. No, pardon me, just the last two figures separately, $6,460.01 and $325.35?

A. $6,785.36.

Q. I call you attention to the wages column for 1948 on your expense control and ask you to read the footing in the month of November. What is that? A. $27,499.93.

Q. The total of the preceding month, please, for November? [3808] A. $26,098.

Q. And that is the figure you had first?

A. Yes.

(Testimony of L. Hicks Taylor.)

Q. And then for the month of November, you do add to that? A. $2,600.95.

Q. And your total there when you added them was what? A. $28,699.93.

Q. And then what figure do you show for the end of November, 1948?

A. $30,884.92.

Q. No, for the end of November, 1948?

A. $27,499.93.

Q. And you are adding the two figures in the book, and there is how much difference between what you added there?

A. The difference is $1200.

Q. What was that $1200?

A. That—I must apologize to you. I thought I looked at this and didn't see that deduction. The $1200 is reduced from wages, and $1200 added to the equipment account.

Q. And I will ask you—then, there was a change in your wages for 1948? [3809]

A. Yes, there was.

Q. And was there any notation in your ledger to show that?

A. Yes, this is the ledger.

Q. Then, the only change there is the false addition of two figures for the month of November in your wages column of your purchase control, is that correct?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Is there any

(Testimony of L. Hicks Taylor.)

other entry of that $1200 of adjustment for wages other than the addition of the two figures for a total $1200 less than the correct total?

A. The $1200 is deducted at the end of the year, and it is added to the equipment account in the same expense control account.

Q. What is the month at which that $1200 adjustment is made there?

A. Apparently I reflected it at the end of November in working it out.

Q. That is not the end of the fiscal year, is it?

A. The end of the year, it brings the total into the end of the year.

Q. There was a December total added after that?

A. Yes, it is less $1200, or it should be.

Q. Did you make the addition at the end of November or go back and change the figures?

A. That I will not say. The work sheet reflects when the job was done.

Q. Does it look like the figure was changed there for your footing for November?

A. Yes, it does.

Q. Now, we will go to the November entry for equipment, under purchase control, and your footing at the beginning of November is what, please?

A. $7,984.36.

Q. And became? A. $6,460.01.

Q. That was the second series of figures you had, that you added there? A. Yes.

Q. And your next entry is what?

(Testimony of L. Hicks Taylor.)

A. $325.35.

Q. And what figure did you get?

A. $6,784.36.

Q. And what figure then shows for your footing at [3811] the end of November, 1948?

A. $7,984.36.

Q. And what is the difference between the first time you added it here in the court room and the figure that shows on your footing for November, 1948? A. It is $1200.

Q. What is that $1200?

A. That is the same $1200 we have been conversing about here for some time.

Q. Is there any other entry in your ledger that you maintained to reflect that $1200 wages?

A. It reflects right here. It shows a decrease in wages and an increase in equipment.

Q. Through what?

A. Through the general ledger. This is a part of the general ledger, this series of accounts.

Q. Then the only place that that wages is reduced $1200 and equipment added $1200 is by erroneous additions of those two sets of figures, is that not correct?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Mr. Griffin: May I inquire, when the witness answered: "This is part of the general ledger," what is [3112] he referring to, what document?

The Witness: Well, referring to the general

(Testimony of L. Hicks Taylor.)

ledger of the Puyallup Creamery, Exhibit 220, and we were reflecting its purpose from Exhibit 226.

Mr. Griffin: Work sheet?

The Witness: To show reflection of the entry.

Q. (By Mr. Obenour continuing): Now, how does the addition of the footing for the end of October, plus the entry for November showing a total $1200 less than the true figure, show an adjustment of the $1200 Mr. Forster received for the month—through the year of 1948?

Mr. LeSourd: Object to the form of the question, no showing as to what the true figure is.

Mr. Obenour: There was testimony all through the morning.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: You used the words "true figure," and it subjects the question to objection, probably. If you can eliminate that——

Mr. Obenour: (Interposing) Very well. [3813]

Q. (By Mr. Obenour): How does the manner in which you computed your footing for the month of November in wages reflect an item for the amount of money Mr. Forster received for the year 1948 from Simonson and Forster?

A. It shows that it was restored to profit through the wage account.

Q. Did you then consider that wages through the—until December?

A. The only way to explain that, Mr. Obenour,

(Testimony of L. Hicks Taylor.)

is that at the time it was set up, there was no decision as to what it was going to be, and I instructed Mr. Forster, or Mr. Simonson, to put it in an expense column as merely a descriptive column.

Q. Did you make out a W-2 for that $1200?

A. I did not prepare the W-2's but it was not considered wages the way it was finally settled.

Q. Are not W-2's computed as each monthly payment is made?

A. A wage record that is properly kept would show the withholding tax and the Social Security deductions made monthly.

Q. And does not a company show a recap that they submit to the Government at the end of the year, showing the totals of all W-2 forms that they are submitting to the Government for the total wages paid? [3814]

Mr. LeSourd: Objected to as irrelevant.

Mr. Obenour: On the contrary, if the Court please.

The Court: Objection overruled.

A. That is the practice of the office force in all these places.

Q. (By Mr. Obenour): And was that entry in —was that not the entry then, of reducing wages $1200 so that the recap, or W-2, of Simonson and Forster, that they would submit to the Government, would not show the receipt of $1200 from Simonson and Forster in that year?

A. It was determined that it was not the salary so it would not appear in the wage account.

(Testimony of L. Hicks Taylor.)

Q. Was a 1099 prepared on it?

A. It was not. He was an officer in the company and had authority to draw money from the company if he cared to.

Q. He received the money?

A. The checks here display he received the money.

Q. You knew he received it?

A. Certainly I did.

Q. You did not include it on the tax returns?

A. I did not. [3815]

Q. What was the adjustment you made for 1949?

A. There appears to be one entry of $1,553.69.

Q. Now, that, I believe, you testified included the $1200 Mr. Forster received in 1949?

A. To the best of my recollection, it does, without having the work sheet.

Q. And what is that figure again?

A. $1,553.69.

Q. I will ask you, what is the total of your footings for the equipment columns at the end of 1949?

A. $1,553.69.

Q. That is exactly the same figure, is it not?

A. Yes, sir.

Q. And is that not a computation of all of the entries you made in your ledger for the year 1949 for the equipment column?

A. No. There is an entry of $1,109.98 also.

Q. There is what?

A. One for $1,109.98.

(Testimony of L. Hicks Taylor.)

Q. But the $1,553. you stated, included the $1200 to Mr. Forster?

A. I didn't state that. I quoted the figure that I thought it might be in. I don't see it in this.

Q. Now—you say then this $1,553 figure does not include the adjustment for Mr. Forster?

A. It apparently does not.

Q. Then where is the figure in your ledger to show the $1200 Mr. Forster received in 1949?

A. Without the work sheet, I cannot give you that answer, because the ledger was not officially closed when I turned it over to them when I left the City.

Q. Was there any equipment involved in that transaction?

A. It was supposed to be the same situation in 1949 as existed in 1948 with Mr. Forster and Mr. Simonson.

Q. Do you know any more about the type of equipment, supposedly used in 1949, than you testified to in 1948?

A. I really don't know, Mr. Obenour.

Q. You have no knowledge about what the equipment is?

A. No, at this time, I don't have a recollection.

Q. Was there any entry then as to Mr. Simonson's participation in this equipment in 1949?

A. No.

Q. Was there any W-2 for the money Mr. Forster [3817] received?

(Testimony of L. Hicks Taylor.)

A. I would not be able to tell you. I didn't prepare those.

Q. What would be the reason that the money Mr. Forster received as one officer and owner of the company should be handled differently than the money Mr. Simonson received as an officer and owner of the company?

A. As I explained before, there was no determination what this drawing was for or about. This corporation was losing money, and it would be necessary to contribute to the capital at some time and this was not considered a wage withdrawal.

Q. Mr. Forster received the money?

A. Yes; I will say "yes."

Q. Not shown on the—on his tax returns that you prepared? A. Correct.

Q. And handled in the manner that you have described as to the ledger you maintained?

A. In other words, it was restored to profit.

Q. Now, are those among the books you include under the provision of the stamp that you use on the tax return of Mr. Forster and Simonson and Forster Corporation? [3818]

Mr. LeSourd: Objected to unless he specifies what he means by "those." I don't know what he is talking about.

The Court: Do you wish to clarify, Mr. Obenour?

Q. (By Mr. Obenour continuing): You qualified certain books that you kept as your responsi-

(Testimony of L. Hicks Taylor.)

bility in extending to the Government the corporation tax returns; do you recall? A. Yes.

Q. And you excluded other books that you had not kept?

A. I don't believe anything was excluded.

Q. What was the purpose of your stamp?

A. It is to display the work that was done in the preparation of the tax return.

Q. And to notify the Government you were not responsible for the truth of certain figures in the books?

Mr. LeSourd: Objected to, your Honor, as an improper form of question.

Mr. Obenour: I believe that was——

The Court: (Interposing) Objection sustained.

Q. (By Mr. Obenour continuing): Was there any way that anyone could determine Mr. Forster was receiving $100 a month from Simonson and Forster from your ledger?

Mr. LeSourd: If your Honor please, I will object to this question, and note an objection to the line of questions where they assume that details are supposed to go in a general ledger.

Details are in subsidiary books, and not a general ledger. It is an improper question.

Mr. Obenour: I see nothing improper. He says it is all in the system in the preparation of the returns for the Government.

The Court: And your question is that $100 must appear in the ledger?

Mr. Obenour: Could anyone determine from the

(Testimony of L. Hicks Taylor.)

books he maintained that Mr. Forster was receiving $100 a month from Simonson and Forster?

Mr. LeSourd: Your Honor, the journals would clearly show those payments, and the question is completely misleading and improper. It assumes that the general ledger should have every item listed in it, and that is not the purpose of it.

The Court: I think that may be correct, but the witness could answer, I assume, properly. The Court [3820] will overrule the objection.

A. The journals show checks issued to Mr. Forster; twelve of them, I believe, or eleven, in one year, and twelve in the next year.

Q. (By Mr. Obenour): And that is your answer? I refer to the books that you maintained.

A. The books that I maintained?

Q. Yes.

A. They do not show twelve checks in each year. The journals, at Puyallup, will show twelve checks in each year.

Q. Referring to Renton Ice and Ice Cream Company, they employed a bookkeeper there?

A. In the first part, Mr. Schneider was a bookkeeper, with a part-time girl.

Q. Later, they employed a full-time bookkeeper?

A. Well, partial bookkeeper under Mr. Schneider's direct supervision.

Q. She kept some of the books, and Mr. Schneider kept part; accounts payable and what else?

A. Mr. Schneider kept the check register.

(Testimony of L. Hicks Taylor.)

Q. Mr. Schneider kept the check register, and accounts payable?

A. There was no accounts payable register while I [3821] was there.

Q. There was an exhibit, I believe, that Mr. Schneider identified as an accounts payable book.

A. What he identified by that accounts payable was not used while I was there. It was never completed.

Q. But he did keep that?

A. He kept parts of it, yes.

Q. Did you discuss the bookkeeping system of Renton Ice Cream with the regular bookkeeper they employed?

A. No, not in its entirety, no. I discussed various little items, I presume, in conversation. I don't recollect any particular thing.

Q. Did you determine, or, rather, did anything occur during this period of 1945 to 1949 that caused you to believe that the bookkeeper was not competent? A. I don't believe so.

Q. And did anything occur in 1945 to 1949 to cause you to think that the bookkeeper was not honest? A. I don't believe so.

Q. Now, as I understand the testimony, you stated that in September of 1942 at the first stockholders' meeting of the Renton Ice and Ice Cream Company [3822] the salary plan was discussed?

A. That is correct.

Q. Now, was it before this or at this time that

(Testimony of L. Hicks Taylor.)

it was discussed that Mr. Forster should remain in the background because of Mr. Williams?

A. At that time, at the meeting of the organization, and then many times after that.

Q. What was the concern, that Mr. Williams would not sell to the combination of Schneider, Baskett and Forster?

A. That is partially the story, yes.

Q. What is the rest of it?

A. The rest was a competitive position that Mr. Forster was in.

Q. What was that competitive position?

A. As I recollect, Mr. Forster had an ice cream business east of Lake Washington and a gentleman's agreement was worked out with other ice cream companies that they would not go into that territory if Mr. Forster didn't move his ice cream business into Seattle.

Q. Well, then, what did that have to do with his being known out in Renton?

A. Am I to explain another part? The Arden Ice Cream Company, or Arden Farms, furnished the ice cream mix to the Renton Ice and Ice Cream Company, and [3823] Mr. Forster didn't particularly care about Arden knowing about it until he was able to take the business over.

Q. From the outset, when Mr. Forster first became interested in this company, it was determined that his presence should be concealed?

A. To some——

Mr. LeSourd: (Interposing) I object to the form

(Testimony of L. Hicks Taylor.)

of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour): What was the purpose then of Mr. Forster's not being identified with it?

A. For competitive reasons.

Q. And his identity was to be what would you say—concealed?

A. Well, you probably would call it that.

Q. And then in plan with this concealment, you became one of the original incorporators?

A. That is correct.

Q. And you took, nominally took, ten shares of the corporation stock?

A. In the organization, usually there are three subscribers and in order to complete the incorporation, I subscribed for ten shares for Mr. Forster.

Q. So Mr. Forster's name did not appear in the original articles of incorporation?

A. That is correct.

Q. And similarly, he did not appear as an officer of the corporation at that time?

A. I believe that is correct.

Q. And at the time that the company was founded you became the Secretary-Treasurer of the corporation? A. That is correct.

Q. Mr. Forster's name was not appearing on the signature card for the bank account at that time?

A. To the best of my recollection, Mr. Forster's name didn't appear until some time in 1945 or '46.

Q. And, however, Mr. Forster was actually participating in the operation of the Renton Ice and

(Testimony of L. Hicks Taylor.)

Ice Cream Company from the first time it was taken over by Baskett and Schneider?

A. He was functioning as a part owner.

Q. He attended the corporation meetings?

A. Yes.

Q. And his name appeared on the minute books?

A. To the best of my recollection, he didn't appear in the minute books until 1945 or 1946.

Q. His name appeared in the stock book though, didn't it, right from the first? [3825]

A. That is possible, yes.

Q. Now, in accordance with this plan of concealing Mr. Forster's identity with this company, this salary plan was formed in September, 1942, is that correct?

A. I would not say "concealing the payments to Mr. Forster," but the payment plan, or the agreement, was made in that time.

Q. Well, what was the plan?

A. The agreement was that Mr. Forster should receive one-third of the remaining portion of the salaries of Mr. Baskett and of Mr. Schneider.

Q. And this was made in September, 1942, at this meeting? Who was present at this meeting?

A. Mr. Baskett, Mr. Schneider, Mr. Forster, and myself.

Q. Why was this plan made?

A. As to carrying out the more or less concealing of his identity as being a party of the Renton Ice and Ice Cream Company.

Q. And this payment of money to Mr. Forster

(Testimony of L. Hicks Taylor.)

in this manner was to conceal his participation in it?

A. The thought was to—the name part—the checks were made so that there would not be any concealment. [3826]

Q. What was that, again?

A. The checks were made so that there would not be a concealment of it.

Q. The checks were made so that there would not be a concealment? A. That is right.

Q. How was that to be done?

A. Two-thirds of the amount to Schneider and Baskett, and one-third to Schneider and Baskett to be endorsed which Mr. Forster would receive and his endorsement would appear on the back.

Q. How would payment of money to Mr. Forster show then that he was receiving this?

A. That was Mr. Forster's type of bookkeeping to look after.

Q. How would this—you stated that this plan was to show that he did receive the money, if I understood you correctly. How does that show he received the money?

A. His endorsement on the back would be a definite proof of the receipt of the funds.

Q. So, if someone went through all the cancelled checks of the Renton Ice and Ice Cream and looked at all the endorsements they could readily see Mr. Forster was receiving this money? [3827]

A. That is true.

(Testimony of L. Hicks Taylor.)

Q. And that is your idea of identifying Mr. Forster as receiving the money?

Mr. LeSourd: Objected to, argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): How were these checks entered, Mr. Taylor?

A. They were entered on the Renton Ice and Ice Cream books as salary to those two gentlemen.

Q. What two gentlemen?

A. Mr. Schneider and Mr. Baskett.

Q. If all these checks in Exhibits 202, 203, 204, 205,—pardon me, not 205—206, 208, 207 and 209—not 209—210 and 211—those were all entered in this manner and charged to salary of Mr. Baskett and Mr. Schneider?

Mr. LeSourd: I will object unless he hands them to the witness. To assume that anyone can remember all these exhibits by number——

Mr. Obenour: (Interposing) Surely. Let's go one by one.

The Court: Do you have them all there?

Mr. Obenour: Yes, sir.

The Court: You might show them all. [3828]

Q. (By Mr. Obenour): 202, three checks, $125, two to Mr. Baskett and one to Mr. Schneider in 1943.

Were those charged to the salary of those gentlemen?

A. I cannot recollect what these three are. I am not clear in my mind.

Q. 203, can you recollect what those are?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. What are those?

A. These are the salary checks issued to R. J. Schneider, Maisie Baskett, and another to Maisie Baskett, completing their annual salary, presumably for the year 1944.

Q. And those were made then in the manner you described of two checks, one in the amount of two-thirds to Baskett and Schneider, and one-third to the same gentleman which would be endorsed to Mr. Forster?

A. Yes, and they show Mr. Forster's endorsement on them.

Q. Now, then, Exhibit 208, a group of four checks, is that a similar plan that you have described in the year 1948? A. Yes.

Q. Now, this was in accordance with the plan made [3829] on that date, is that right?

A. The plan made in 1942.

Q. The plan made in 1942? A. Yes.

Q. Whose plan was this, now?

A. The combined group.

Q. The combined group?

A. All four; all four people present.

Q. Did you participate in that? A. I did.

Q. And then it was through the combined thinking of four of you that this plan was formulated?

A. Yes.

Q. And who was responsible for the manner in which the bookkeeping was to be made?

(Testimony of L. Hicks Taylor.)

A. Well, I presume that I was the one that handled the books.

Q. Who instructed Mr. Schneider and the bookkeeper as to how the checks were to be charged?

A. Mr. Schneider knew how they were to be charged, and set them up that way.

Q. But you had instructed him in the first place?

A. It wasn't my instruction necessarily. It was all planned and worked out the day of the agreement. [3830]

Q. Who computed the amounts?

A. In many cases, it was necessary for me to pick up the withdrawals and figure the withholding tax for the year, and I would sometimes give them a final figure.

Q. Is that like the note on the exhibit you are holding in your hand; 208, is it?

A. I am looking at Exhibit 208. There are calculations here which is not in my handwriting, but it has a note—Mr. Schneider, Mr. Taylor says the total is.

Q. Did you so advise the bookkeeper there of those figures?

A. It is possible I did. While they are not in my handwriting——

Q. (Interposing) Then the plan was for the four check compensations and Mr. Forster would be known to receive his money through the endorsements?

A. It could be checked that way, yes.

(Testimony of L. Hicks Taylor.)

Q. Well, why did you use then counter checks on the Renton Bank for the payments in 1945, '46 and '47?

A. Mr. Obenour, do you have the other exhibits that go with these? [3831]

Q. Which exhibits are those?

A. There must be exhibits to go with these, because these are the entire amount of checks to the individuals.

Q. Handing you Exhibits 75, 76, and 77, cashier checks to Hans Forster in each instance for the years 1945, '6 and '7; is that to which you referred?

(Whereupon, there was a brief pause.)

Mr. Cox: Is there a question pending?

Mr. Obenour: Yes, I asked and he asked to see them.

A. I am reading from Exhibit 204. There are two checks on the Renton Ice and Ice Cream Company. One made to Maisie Baskett for $4,110, one to R. J. Schneider for $3,600 and they are dated August 27, 1945. At that date, Mr. Schneider changed the agreement to suit Mr. Schneider, and he took the checks and ordered cashier checks which changed the original agreement.

Q. (By Mr. Obenour): You knew nothing about this? A. I knew nothing about it.

Q. Did you not sign these checks to Mr. Schneider and Mrs. Baskett in the year 1947, Exhibit [3832] 207?

A. I might clarify my statement by this: that in the signing of these original checks from the Ren-

(Testimony of L. Hicks Taylor.)

ton Ice and Ice Cream Company, I wrote the checks.

Q. You wrote the checks?

A. I wrote the checks, but, so far as the cashier check situation, that was Mr. Schneider's definite idea, and he handled that himself, completely.

Q. Then after this plan was formulated, which you described, in the years 1945, '6 and '7, a single check was made to each of the two stockholders, Schneider and Baskett, is that correct?

A. It is my recollection until 1947 or '8 they wrote two checks.

Q. And you made out the checks, you directed the checks?

A. I don't know about in the later years.

Q. Well, did you say you drew these checks?

A. I wrote those checks.

Q. 204, —6 and—7?

A. Those were written by me and in my handwriting.

Q. So that you knew checks were being made in each of those years to Mr. Baskett and later Mrs. [3833] Baskett and to Mr. Schneider?

A. That is correct.

Q. You knew it was not in accordance with the plans as you understood them?

A. The original arrangement was changed.

Q. You knew that Mr. Schneider was then buying cashier's checks?

A. It never came to my attention that he was.

Q. It never came to your attention?

A. No.

(Testimony of L. Hicks Taylor.)

Q. Did you think that Mr. Schneider was not paying Mr. Forster his share for that one-third?

A. That I don't know.

Q. Did Mr. Forster ever say he was not receiving his one-third in those years?

A. I don't know that he ever mentioned it to me.

Q. For three years, a company in which you were secretary-treasurer and of which Mr. Forster was president, and in that time he did not bring up to you the fact that he was not receiving any money from this corporation?

A. He didn't mention it to me, particularly, to my knowledge, to my recollection.

Q. Did you ever have any doubt in your mind [3834] he was receiving this money when you made out equal checks to Mr. Schneider and Mrs. Baskett?

A. There would be no reason for me to surmise what was going on.

Q. Did you have any doubt in your mind that Mr. Forster was not receiving his share of those checks? A. Any doubt in my mind?

Q. That is right.

A. I never gave it a thought.

Q. Why, then, in 1948 did you go back to the other system?

A. That was done by Mr. Schneider, not by me.

Q. By Mr. Schneider?

A. He was President and Manager of that concern.

(Testimony of L. Hicks Taylor.)

Q. And you know nothing about those checks?

A. I never made them, I don't know; but, you might show me, if you have the exhibit.

Q. Do you have any computations of the splits?

A. I possibly——

Q. (Interposing) In 1945, '6 and '7?

A. The split they were to make?

Q. Yes, that they were. A. I did not

Q. You made no computation of the fact that Mr. Forster received $2,685 in 1947, and $2,685——

A. (Interposing) I did not.

Q. You knew nothing about it?

A. I did not.

Q. But you did, in 1948, recalculate the amount, according to the note in the exhibit 208?

Mr. LeSourd: Just a moment. Are you talking about the amount paid to Mr. Forster, or the amount of the withholding tax?

M. Obenour: The amount paid to Mr. Forster.

A. This is not in my handwriting, Mr. Obenour. Somebody said, "Mr. Taylor says this."

Q. (By Mr. Obenour continuing): You said it was true a moment ago, didn't you?

A. I said it was possible it was true. I didn't say absolutely it was.

Q. Do you recall computing the distribution of the proceeds at the end of the year at any time after 1944?

A. When you say "proceeds," you mean what each one, Mr. Schneider and Mrs. Baskett, had, yes.

Q. And Mr. Forster?

(Testimony of L. Hicks Taylor.)

A. I had nothing to do with what Mr. Forster [3836] was paid. That was figured by Mr. Schneider.

Mr. Obenour: We would recess now, if the Court please.

The Court: You wish a recess?

Mr. Obenour: Yes.

The Court: Ladies and Gentlemen of the Jury: At this time, we will recess for the afternoon recess. The Court calls your attention to the admonition given on similar occasions and asks that you heed that admonition on this occasion.

You may now be excused.

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 2:46 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:00 o'clock p.m. April 14, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the jury.

(Whereupon, the jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the court room? [3837]

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Obenour.

Q. (By Mr. Obenour): Why wasn't the salary

(Testimony of L. Hicks Taylor.)

account set up for Mr. Forster as it was for Mr. Baskett and Mr. Schneider?

A. The original agreement was that the salary of Mr. Baskett and Mr. Schneider would be set at five thousand a year, and this distribution was to be not a salary for Mr. Forster, but a contribution to his earnings.

Q. A contribution to his earnings?

A. That is right.

Q. You say it was not a salary?

A. Not intended specifically, or technically, as a salary.

Q. What was it?

A. It was a contribution for his support of the two in their operation.

Q. And was it a dividend?

A. No, it wouldn't be called a dividend.

Q. What would it be called? A. Earnings.

Q. Earnings? A. To Mr. Forster, yes.

Q. Wouldn't that earning be taxable?

A. Yes.

Q. It would be taxable to Mr. Forster?

A. Yes.

Q. Why wasn't it then set up as some account to Mr. Forster, rather than concealed in the salary account of Mr. Baskett and Mr. Schneider?

A. That was the continuation of the agreement.

Q. And that was to conceal his participation from Mr. Williams and from his competition?

A. That was the general idea.

Q. After the sale was made from Mr. Williams,

(Testimony of L. Hicks Taylor.)

Mr. Williams could no longer affect the transaction, could he?

A. Well, they still owed Mr. Williams considerable money.

Q. But he couldn't go back on them, then, at that time, could he?

A. That I am not familiar with, all the details.

Q. So that after 1942, Mr. Williams would no longer be of concern to them?

Mr. LeSourd: Objection. Argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): I believe you stated it was [3839] Mr. Forster's participation that was concerned because of the sale of mix by Arden's to Renton, is that correct?

A. That is partially it, yes.

Q. And Mr. Forster, through Issaquah Creamery, took over this mix account in 1944 according to the testimony, is that correct?

A. I haven't any recollection of the time that products were taken over, because I didn't particularly deal with that.

Q. Wasn't that approximately it, to the best of your recollection?

A. I thought it was late 1945, but I may be wrong.

Q. But after this date, in any event, there was no reason to conceal Mr. Forster's participation until 1950 on that score, was there?

A. It just continued on, is all that happened.

(Testimony of L. Hicks Taylor.)

Q. So that there was no reason to conceal Mr. Forster's participation after that time?

A. No.

Q. And then why was not a salary account set up for Mr. Forster at that time?

A. That I cannot answer. They just continued on the same agreement until 1945 or '6 here when Mr. [3840] Schneider changed it.

Q. Were the W-2's made out for Mr. Forster at any time?

A. I had nothing to do with W-2's, so I don't know.

Q. You know you included one, though, in the preparation of his income tax. A. I did what?

Q. You know you included one W-2?

A. Yes, I know that, but I had no part in preparing it.

Q. And none of this money was included by you on his tax return? A. I don't know.

Q. You don't know?

A. No.

Q. Did you include any other income on the tax return you prepared, other than the salary of Mr. Forster?

A. This agreement was that Mr. Forster would deposit those funds in the Alpine Dairy bank account.

Q. When was that agreement made?

A. In 1942.

Q. To deposit in the Alpine Bank Account?

(Testimony of L. Hicks Taylor.)

A. Alpine Dairy bank account, so that it would [3841] be taken into income.

Q. How would that be taken into income?

A. On the Alpine books. It would be an income item.

Q. A deposit to the Alpine Bank Account would become an income item on the Alpine books?

A. Income on the Alpine books.

Q. How would that get on the Alpine books?

A. By depositing it in the Alpine bank account.

Q. Weren't the books kept by Mrs. Wilcox at Alpine Dairy for the money she received through payments from sales? A. That is right.

Q. This would be included in the sales of Alpine Dairy? A. To show it included.

Q. Then you intended the tax be paid twice, by Mr. Baskett and Mr. Schneider and secondly, by Mr. Forster?

A. Well, the salary had to be paid on.

Q. You intended this money received by Mr. Forster from Mr. Baskett and Mr. Schneider should be paid twice, the taxes thereon should be paid twice, is that right? [3842] A. Paid twice?

Q. Yes, by Mr. Baskett and Mr. Schneider in their personal tax return?

A. They paid for those.

Q. And then again on the income of the Alpine Dairy, the tax on the proceeds?

A. Would there be a double tax if Mr. Forster paid on his?

Q. Mr. Baskett and Mr. Schneider, according

(Testimony of L. Hicks Taylor.)

to the returns you prepared, paid tax on the entire amount set up? A. That is correct.

Q. The tax would be paid there, would it not?

A. Yes.

Q. And would be, if included on the income of Mr. Forster at Alpine Dairy, it would be paid again?

A. Mr. Forster would be paying on his——

Q. (Interposing) It would be paid twice, would it not?

A. You might work out a formula that would look that way.

Q. Wouldn't it be paid twice?

A. I don't see that it would.

Q. You consider that salary as sales of Alpine Dairy?

A. It would be a miscellaneous earning that would be accumulated into the records.

Q. It would be picked up as sales of Alpine?

A. Yes.

Q. Would they pay sales tax on that?

A. Not sales tax. It would be wholesale. They would pay a business tax on it.

Q. Then the earnings paid Mr. Forster from Renton Ice Cream would be a wholesale of Alpine Dairy, is that what you mean?

A. If you understood the set-up of Alpine Dairy, you would understand what I mean when I say it went through the wholesale sales of Alpine Dairy bookkeeping system.

Q. Did you so instruct Mrs. Wilcox?

(Testimony of L. Hicks Taylor.)

A. I didn't instruct anybody. That was not my business.

Q. Did you set up the plan?

A. It was not my plan. It was a plan of four people.

Q. You were in on it?

A. Certainly, I sat in on it.

Q. And you prepared Mr. Forster's return?

A. I did.

Q. And you prepared the returns of Alpine, including [3844] Mr. Forster's, and of Renton?

A. When you say "including Renton"— Alpine Dairy, we took care of, yes.

Q. It was included in Mr. Forster's return?

A. Yes.

Q. And you still did nothing further to determine whether or not that was included in the sales of Alpine Dairy?

A. It was not my place. I wasn't auditing the books.

Q. Now, you say this entire plan was to conceal Mr. Forster's participation?

A. Just his identity in the operation.

Q. From his competitors?

A. That is right.

Q. How would his competitors see the books of Renton Ice and Ice Cream Company?

A. They wouldn't see the books. They would see checks floating around.

Q. They would see checks floating around?

(Testimony of L. Hicks Taylor.)

A. Sure, if checks were written to him and he was signing checks.

Q. Mr. Forster received a list of two or three pages of checks that were included from all sorts of companies, as I recall, and you mean that ties him into [3845] those companies?

A. I am afraid I don't get what——

Q. (Interposing) You are saying now, then, that the fact that his name would be on the front of the check as a payee would show the competitor that he participated in Renton Ice and Ice Cream Company?

A. It is possible they could.

Q. And yet they wouldn't look over on the back and see the endorsement?

A. Because they went through one bank and were returned to the Renton Ice Cream Company.

Q. The competitors wouldn't see the corporate books, would they?

A. No, I don't think so.

Q. They wouldn't see the tax returns, would they? A. No.

Q. They wouldn't see any of the books of account where they would be carried as salary, would they? A. No.

Q. Then why was this money not included on the books and records of Renton Ice and Ice Cream Company?

A. Just according to what the agreement called for.

Q. Do you recall Revenue Agent Huff auditing

(Testimony of L. Hicks Taylor.)

the [3846] returns of Renton Ice and Ice Cream?

A. Yes.

Q. Did you disclose to Agent Huff this payment of money to Mr. Forster? A. No.

Q. Was there any way the Government could determine from any return or any books of the Renton, Alpine, or Mr. Forster, that he was receiving this money from Renton Ice Cream?

A. There was no intention of not paying the tax on it at all.

Q. The tax was not paid, though, was it?

A. I am not clear in my mind whether it was paid or not.

Q. Is it for this plan that you received $600 a year from Renton Ice and Ice Cream Company, Mr. Taylor?

A. I received $600 for services rendered, and nothing else.

Q. Either you or Mr. Schneider wrote all of these checks? A. Certainly.

Q. The bookkeeper had nothing to do with it?

A. Well, not that I know of.

Q. Mrs. Baskett had nothing to do with it except to turn over money to Mr. Forster? [3847]

A. That is right.

Q. Arctic Gardens, you have stated you kept the books and made out these checks. Do you recall one check Mrs. Wilcox testified she received from Arctic Gardens, payable to Alpine, and she entered it in miscellaneous receipts, Exhibit 240?

A. I have a recollection of it, yes.

(Testimony of L. Hicks Taylor.)

May I see it, please?

(Whereupon, document was handed to the witness by Mr. Obenour.)

The Court: Exhibit 240?

Mr. Obenour: Exhibit 240, yes, sir.

Q. (By Mr. Obenour): Do you recall that?

A. Yes.

Q. And you wrote that check.

A. I wrote that check.

Q. You mailed it to Alpine?

A. I may have mailed it to Alpine, yes.

Q. And it was properly handled, according to the testimony of Mrs. Wilcox and your knowledge of the affairs of Alpine Dairy in the miscellaneous receipts of the Alpine Dairy, is that correct?

Mr. LeSourd: Just a moment. I will object to that, combining two things: the knowledge and the [3848] testimony in this case.

Mr. Obenour: Very well.

Q. (By Mr. Obenour continuing): Do you recall the testimony of Mrs. Wilcox to the manner in which it was handled?

A. Yes, I remember the testimony.

Q. And do you agree, from your knowledge of the affairs of Alpine Dairy, that that was properly handled by Mrs. Wilcox in the receipts of that company?

Mr. LeSourd: Objected to as irrelevant and immaterial.

Mr. Obenour: I am asking for his knowledge, if that was properly handled by Mrs. Wilcox in the normal course of the books.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Ask him whether he knows. I have no objection to that.

Mr. Obenour: He knows the testimony of Mrs. Wilcox.

Mr. LeSourd: That is irrelevant.

The Court: The question is, whether he believes it was properly handled?

Mr. Obenour: Yes.

A. It has every evidence of having been properly handled. [3849]

Q. (By Mr. Obenour): Now, Exhibit 239 includes a group of other checks of Arctic Gardens, all signed by you, is that correct?

A. They are all written by me.

Q. And also 253 and 254.

A. 253 and 254 also were written by me.

Q. Were those checks mailed?

The Court: Just so that we may follow, and the jury, what are those?

Mr. Obenour: Checks of Alpine Dairy.

Mr. Cox: Arctic Gardens.

Mr. Obenour: Arctic Gardens, I am sorry, written by Mr. Taylor.

The Court: Written to Alpine?

Mr. Obenour: Among others, Alpine and Issaquah and Hans Forster.

I asked generally, where were those checks mailed, all of them.

Mr. LeSourd: It seems to me that the question goes to such breadth of scope, if Counsel wants to inquire about individual checks, here are some, pre-

(Testimony of L. Hicks Taylor.)

sumably, to repay loans and some Issaquah Creamery and some Alpine Dairy.

Mr. Obenour: He wrote all the checks. We will take them one at a time, if counsel desires. [3850]

Q. (By Mr. Obenour continuing): How many checks there are made to Alpine Dairy?

A. I find one dated February 28, 1948, for $641.16, on Exhibit 239.

Q. Where was that mailed, if you know?

A. It would be difficult for me to state exactly, but I believe I would have mailed it to the Alpine Dairy.

Q. You heard Mrs. Wilcox's testimony that the final check was the only Arctic Gardens check she received?

A. I heard her testimony to that effect.

Mr. LeSourd: Just a moment. I will move to strike the question and answer, because, as I recall her testimony, all she said was that was the only one she remembered, or had her endorsement. She didn't remember as to the others.

The Court: Well, the witness answered the question here. I believe you stated you recalled the matter.

I think, to straighten the record out, probably the witness stated what he recalled when he answered. Do you have a recollection?

The Witness: My recollection would be that [3851] I mailed this check to the Alpine——

The Court: (Interposing) No, the question is about when Mrs. Wilcox——

(Testimony of L. Hicks Taylor.)

Mr. Obenour: (Interposing) Yes, sir.

The Court: (Continuing) ——testified. I don't think it is properly in the record, because that isn't the issue. I think we might straighten the record out by striking that portion, and you may re-establish it, Mr. Obenour. The Court will strike that portion of the witness's testimony just given wherein it was asked if he recalled what the testimony was of Mrs. Wilcox and any answers in that respect may be stricken and disregarded, and I think you can start over, Mr. Obenour, if you wish to establish that point.

Q. (By Mr. Obenour): Do you recall Mrs. Wilcox's testimony concerning receipt of Arctic Gardens checks?

A. Yes, I have a recollection of it.

Q. What is that recollection?

A. That she deposited the checks she received from Arctic Gardens.

Q. Do you recall anything further as to any other Arctic Gardens checks she received?

A. If I recollect correctly, she said she had not received any more. [3852]

Q. To the best of your recollection, would her testimony be correct? A. I don't know.

Q. You don't remember specifically where you mailed that check?

A. No, I haven't—my natural routine would be, having made it out to Alpine Dairy, that that is where I would mail it.

(Testimony of L. Hicks Taylor.)

Q. How about the checks to Issaquah Creamery, what did you do with them?

A. Likewise, the same thing, mailed them to Issaquah Creamery Company.

Q. And Hans Forster, where?

A. To the Issaquah Creamery Company, or to Issaquah.

Q. Did you give any of those checks to Mr. Forster personally? A. It is possible.

Q. Could you have given the Alpine check to Mr. Forster personally?

A. That is possible, too.

Q. One of these—these were all just normal transactions so far as you were concerned?

A. They were written from bills forwarded to me to pay. [3853]

Q. One of them was for interest payments, was it not, in Exhibit 239, dated 12-31-45 in the amount of $773.21?

A. That is, as I remember it, yes.

Q. Do you find that check? A. Yes.

Q. And to whom is that written?

A. That is written to Mr. Hans Forster.

Q. And the amount is $773.21?

A. Correct.

Q. And was that for interest?

A. That was my understanding.

Q. On the last day of the year of 1945?

A. Yes, that is right.

Q. Did you make out a 1099 for that interest payment? A. I did not.

(Testimony of L. Hicks Taylor.)

Q. Why did you not make out a 1099 for the payment of that interest to Mr. Forster?

A. I presume that I didn't carry through, is all.

Q. You were required, according to your knowledge of the situations, to prepare such a form to send to the Government, were you not?

A. I expect I have to admit it. [3854]

Q. But you did not?

A. I did not, because it was a corporation and I didn't feel it was essential.

Q. Did you include that interest on the tax return of Mr. Forster for 1945?

A. I did not,——

Q. (Interposing) Wasn't that——

A. (Continuing) ——that I know of. Not as an individual item, I mean to say.

Q. You prepared the personal tax return of Mr. Forster at that same time and you did not include that as an interest item, either?

A. Unless he gave it to me in his total figures, I wouldn't know.

Q. Mr. Erickson was responsible for the books of Issaquah Creamery?

A. He was the office manager, yes.

Q. Mr. Forster testified, as I understood it, do you recall that Mr. Erickson was working for Issaquah Creamery and not for him; do you recall that testimony?

A. I have a recollection of it, yes.

Q. Who would you say Mr. Erickson was working for?

(Testimony of L. Hicks Taylor.)

Mr. Keesling: I object, your Honor. This wasn't gone into on direct. [3855]

The Court: I don't know the purpose of it, Mr. Obenour. It appears to be beyond the proper scope, unless it has some particular purpose.

Mr. Obenour: If the Court please, we are dealing with three defendants in the operation of a combined effort.

Necessarily, the knowledge of this witness as to the operation and conduct of the other defendants would be relevant, and certainly would be open to this witness's knowledge, or statement, rather, that he had no knowledge that anything was wrong in either the taxes of Mr. Forster or Issaquah Creamery Company, and this is Issaquah Creamery Company.

The Court: What is the purpose of asking this witness whether Mr. Erickson worked for Mr. Forster or Issaquah Creamery Company?

What does that have to do with the cross-examination of this witness? I will ask you the purpose which I wouldn't ordinarily.

Mr. Obenour: The purpose would be to show what this witness's knowledge is of the organization under the subject of the last four counts of the Indictment, Issaquah Creamery Company and each one of the three defendants.

The Court: The Court will sustain the objection. [3856]

Q. (By Mr. Obenour continuing): Did you go

(Testimony of L. Hicks Taylor.)

over the books of the Issaquah Creamery with Mr. Erickson?

A. I did not audit the books of the Issaquah Creamery Company.

Q. Did you discuss the bookkeeping system of Issaquah Creamery Company with Mr. Erickson?

A. Mr. Erickson had been thoroughly schooled in the bookkeeping system by the former bookkeeper, and my comments were only just occasional.

Q. Do you recall your statement made to Mr. Eppler on May 16th in this building?

A. I do not, offhand.

The Court: May 16th, what year?

Mr. Obenour: May 16th, 1951. Do you recall making a statement in this building, May 16th, 1951, in the presence of Mr. Eppler?

The Witness: Yes.

Q. (By Mr. Obenour continuing): Mr. LeSourd, Mr. O'Leary and Mrs. Stokie?

A. Yes, I remember the statements. That is the meeting.

Q. I will ask you if you were asked this [3857] question, and if you made this answer:

"Did Harold Erickson——"

"Question: Did Harold Erickson, the office manager at Issaquah Creamery Company, ever ask you for accounting advice or instructions as to how to carry out his duties as a bookkeeper for the corporation?"

"Answer: In 1937, I spent quite a little time with Harold Erickson, going over the various phases

(Testimony of L. Hicks Taylor.)

of the journals and various records then in existence, and I found that Mr. Erickson was a very excellent accountant and did not need too much coaching, and did a very fine job on the journals when presented."

A. That is a correct statement. Mrs. Eck, Miss Neukirchen, had thoroughly schooled him in the books and I was there and we went through them in a general way, not in detail.

Q. Was the bookkeeping system adequate?

A. I have always felt so.

Q. Did you set it up?

A. Not in its entirety. Some of it was in [3858] existence when I first went with the company, and was continued.

Q. Then would you explain Exhibit 258? That is the chart of accounts that was to be used?

A. That chart of accounts was made up, I believe, if I recollect correctly, in 1940 when we had the break over, but I am not going to make a positive statement as to that, but I think that is when I made that chart of accounts.

Q. That was your chart of accounts?

A. Yes. You will find from—through these books, it is the same chart.

Q. And all of the books of Issaquah, with the exception of the ledger, were kept under Mr. Erickson's supervision at Issaquah Creamery?

A. That is correct.

Q. And here, again, you kept the ledger and you

(Testimony of L. Hicks Taylor.)

would go there once a month to get the figures that would be totalled by Mr. Erickson?

A. That is correct.

Q. Did you ever look into the books at all?

A. I never audited the books.

Q. Did you ever look into the books?

A. When you say "look into them," I had to look into them to make my postings. [3859]

Q. Did you examine the entries?

A. Not any special entries, no.

Q. Mr. Erickson never asked you any questions how any expense should be posted, or charged, rather?

A. Well, I wouldn't want to say that he didn't ever ask me, because I think he did.

Q. Did he ever ask you how to enter any money received?

A. Oh, he probably did. I don't just recollect.

Q. Did you ever ask Mr. Erickson how he showed receipts of Apex checks?

A. I didn't know anything about the Apex checks.

Q. How about Finstad and Utgard checks?

A. I have no knowledge of them.

Q. Arctic Garden checks?

A. I wrote them. I knew they were written, but I had no knowledge as to how he was handling them.

Q. Did you ever ask him? A. No.

Mr. Obenour: May I have Exhibit 238?

(Testimony of L. Hicks Taylor.)

(Whereupon, Exhibit was handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Do you recall Mr. Eppler's testimony as to [3860] the amount of personal expenses that were charged to business expenses of Issaquah and Alpine?

A. Yes, I have a recollection of it.

Q. Do you recall the amount as being twenty-five thousand three hundred two dollars to Alpine, and twenty-five thousand two hundred seven to Issaquah?

A. The amounts I can't just remember, but I remember the testimony.

Q. Would it be approximately those amounts?

Mr. LeSourd: Objected to, your Honor. He says he can't remember.

The Court: Well, he asked him if he knows, approximately. If he doesn't, he may say so.

A. I don't remember approximately, even, without seeing the schedule.

Mr. Obenour: Would you stipulate as to the totals of Exhibit 238?

Mr. Cox: We already have.

Mr. LeSourd: I think this is——

Mr. Obeonur: (Interposing) There is no total on it.

Mr. LeSourd: I don't know what the total is. Have you personally totalled it?

Mr. Obenour: I haven't but Mr. Simonson [3861] has.

Mr. LeSourd: Well, if Mr. Simonson says the

(Testimony of L. Hicks Taylor.)

total is so much, I will go on Mr. Simonson's statement.

Mr. Griffin: Is that Simonson and Forster?

Mr. Obenour: $107,780.86.

Mr. LeSourd: Is that right, Mr. Obenour?

The Court: I am afraid we haven't in the record what the stipulation is.

Mr. Obenour: The totals of the entries on Exhibit 238, which was the stipulation as to checks made payable to Issaquah Creamery Company not recorded on the corporation's books and deposited to Hans Forster's personal savings account.

The Court: And what is the total?

Mr. Obenour: $107,780.86.

The Court: And it is stipulated has having been computed by one of the agents of the Internal Revenue?

Mr. Obenour: Yes, sir.

The Court: Anyone else want to join in that stipulation? I guess it is only material as between the Government and Mr. Taylor's counsel, is that correct?

Mr. Obenour: You are not joining? [3862]

Q. (By Mr. Obenour) Now, this——

Mr. LeSourd: (Interposing) Let's clarify this. This is a total, as I understand it, of the figures on the stipulated exhibit, 238, for all the years, 1943 through 1949, is that correct?

Mr. Obenour: That is correct.

Mr. LeSourd: I am willing to stipulate that as

(Testimony of L. Hicks Taylor.)

simply a total of the figures appearing on the exhibit.

The Court: The record may so show.

Q. (By Mr. Obenour continuing): Of all these checks totalling this amount of $107,000 is it your testimony you have knowledge of none of them? Do you care to examine them?

Mr. LeSourd: Now, if your Honor please, I will object to that question, unless it is stated, knowledge of what?

He has testified that he knew various checks were written in the ordinary course of business, and sent to Issaquah. I assume Counsel is talking about knowledge of the fact when they reached Issaquah they were not entered on the books.

The Court: If you request that counsel should state what he means when he refers to "Do you [3863] have knowledge?", the Court will ask that.

Q. (By Mr. Obenour continuing): Do you have knowledge, or did you have, that any of those checks deposited to 198 were not recorded on the books of Issaquah Creamery Company in the years 1945 to 1949?

A. May I still examine this? I am halfway through.

(Whereupon, there was a brief pause.)

Mr. LeSourd: Can we have the question repeated?

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter:)

(Testimony of L. Hicks Taylor.)

"Do you have knowledge, or did you have, that any of those checks deposited to 198 and not recorded on the books of Issaquah Creamery Company in the years 1945 to 1949?")

Mr. LeSourd: I object to the form of that question.

The Court: Are you talking about the first portion of it—"Do you" or "did you," or the whole thing?

Mr. LeSourd: There is something grammatically [3864] incorrect.

Q. (By Mr. Obenour continuing): Did you have knowledge during the years 1945 to 1949 that any of the checks shown on that exhibit were not being recorded by Issaquah Creamery Company but were being deposited into Account 198?

The Court: Let me interrupt here. Are you inquiring as to whether he knew as to the manner in which the checks were issued during the current year?

Mr. Obenour: No, sir. I am inquiring, in accordance with that stipulation, that he had knowledge of any of those entries were being handled—not recorded and deposited directly to 198.

The Court: It isn't clear to me. I don't know whether it is clear to anyone else.

Mr. LeSourd: I didn't object to it, because as I understand the question, it is the same question I asked Mr. Taylor on direct: whether he knew during this period of time whether these checks were not being put on the books, and deposited in 198.

(Testimony of L. Hicks Taylor.)

If that is a correct interpretation of the question, I have no objection to it.

Mr. Griffin: I am not objecting, because, [3865] whatever he knew, the stipulation is there by his Counsel that they were not being recorded. It has all been stipulated months ago.

The Court: Well, they were not being recorded. The question now is, whether he knew.

Mr. *Obenour:* I took it that is what Mr. Obenour was asking.

The Court: If there is no objection to it, and the witness understands the question, he may answer.

A. I had no knowledge of the entries of any of the checks shown on Exhibit 238.

Q. (By Mr. Obenour): Do you recall——

The Court: (Interposing): You have no knowledge of the entries?

The Witness: Maybe I am ambiguous, too. No knowledge of the lack of entry in the Issaquah Creamery books of these items.

Q. (By Mr. Obenour continuing): And you are unable, from your bookkeeping, or accounting, for Issaquah Creamery to determine that $107,000 of Issaquah Creamery income was not being reported to you?

Mr. LeSourd: I will object to that, your Honor, whether he was able. He might have been able to [3866] if hired to make an audit. The form of the question, I think, is improper, and irrelevant and immaterial, whether he would be able to.

(Testimony of L. Hicks Taylor.)

The Court: Is your question whether he knew, or whether he might be able to know?

Mr. Obenour: Whether he knew that he did not know.

Mr. LeSourd: If he is asking what he knew, I have no objection.

Mr. Griffin: The question was, whether he was able.

The Court: That is the question. I think we will strike the question, and you better restate it.

Mr. Obenour: Very well.

Q. (By Mr. Obenour continuing): Then this information concerning this $107,000 was not given to you? A. That is correct.

Q. Then you did not determine that $107,000 of Issaquah income was not being entered as their taxable income?

Mr. LeSourd: Object to that. I don't understand that question, myself.

Mr. Obenour: I will rephrase it.

The Court: Do you strike the question, and [3867] you want to rephrase it?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour continuing): From your work with the Issaquah books, you did not determine that $101,000 was not reported in the tax returns of Issaquah Creamery?

Mr. LeSourd: I have the same objection.

The Court: The question is: from his work on the books, did he determine that?

Mr. LeSourd: Did he find that?

(Testimony of L. Hicks Taylor.)

The Court: Do you understand the question?

A. The records did not display any of these items to draw them to my attention.

Q. (By Mr. Obenour): Would you have known if this amount of money had been going to someone other than Mr. Forster? A. I would not.

Q. Do you recall Miss Neukirchen's testimony as to the unreported sales of Issaquah Creamery Ice Cream?

A. Yes, I have a recollection of it.

Q. Do you recall that she testified that she told you and complained to you because she had to withhold sales of ice cream? [3868]

Mr. LeSourd: Object to that. That is not a correct statement of the testimony.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): What is your recollection of her testimony concerning her report to you on the sales of ice cream that were not being reported?

A. I am not sure that I remember her testimony about me being in the picture.

Q. Do you recollect she reported to you?

A. I have no remembrance of her ever reporting to me.

A. Could she have? A. It is possible.

Q. But you did nothing further to determine whether or not these sales were being reported?

Mr. LeSourd: Objected to, your Honor. If the testimony indicates he never knew they were being reported, the form of the question is faulty.

(Testimony of L. Hicks Taylor.)

The Court: What sales are you referring to now?

Mr. Obenour: He stated that this unreported sales of ice cream, testified to by Miss Neukirchen——

The Court: (Interposing) And then he states he has no recollection of talking to them, and it isn't [3869] clear in my mind, at least, what sales they are referring to.

Mr. Obenour: I will rephrase it.

Q. (By Mr. Obenour continuing): You have no knowledge at all that ice cream sales were not being reported by Issaquah Creamery at any time?

A. That is correct.

Q. Did you advise Mr. Forster concerning the Daisy Ice Cream Company?

Mr. LeSourd: I will object——

A. (Interposing) I am not sure I understand.

Mr. LeSourd: (Continuing) That is ambiguous, if the Court please.

Mr. Obenour: Give me Number——

The Court: (Interposing) Pardon?

Mr. LeSourd: It is ambiguous. In connection with what?

Q. (By Mr. Obenour): Did you participate in the purchase of Daisy Ice Cream Company by Mr. Forster? A. Yes.

Q. Did you tell Mr. Forster when it was for sale?

A. To the best of my recollection, I did. [3870]

(Testimony of L. Hicks Taylor.)

Q. You helped Mr. Riig prepare deposit slips?

A. Yes.

Q. And you had nothing further to do with it?

A. That is correct.

Q. Did you have knowldege that Mr.—of that matter, to which Mr. Eppler testified as to the transfer of some $17,000 from the Daisy account to account 198?

A. The amount, I don't know. I remember him testifying, but I don't have the amount in my mind.

Q. Do you recall that money was transferred,—according to Mr. Eppler's testimony,—was transferred from the Daisy account to 198?

A. Yes, I remember testimony of that type.

Q. Do you have any recollection of—what is your recollection now, rather, of how this Daisy income was being reported?

A. I have no recollection of it at all.

Q. Did you think it was being reported?

A. Yes.

Q. How did you think it was being reported?

A. I don't know.

Q. Do you recall Miss Neukirchen's testimony that she entered the Daisy charges on the Issaquah sales analysis sheets, Exhibit 244?

A. I remember her testimony to that effect.

Q. Did you ever see those entries upon the sales analysis sheets?

A. I never examined sales records.

Q. Do you recall her testimony as to withholding

(Testimony of L. Hicks Taylor.)

some slips of Daisy, and then making out these sales recaps?

A. I remember the testimony, yes.

Q. Were you aware this was being done?

A. I was not.

Q. Do you recall your statement made to Mr. Eppler previously referred to in this building?

A. I recollect that I made a statement.

Q. I will ask you if you were asked this question, and made this answer:

Mr. LeSourd: What number, Mr. Obenour?

Mr. Obenour: Question seventy, page twelve.

Q. (By Mr. Obenour continuing): "Question: Did you inquire as to where the receipts from Daisy Ice Cream were taken into account for income tax purposes?

"Answer: In my work, it was my general opinion that they were being entered into the Alpine books. I never made any specific inquiry about them."

Were you asked that question and did you [3872] make that answer?

A. That is the answer I gave at that particular time, yes.

Q. Is that—was that a true statement?

A. It was true. My opinion was the income of the Daisy Ice Cream went into the Alpine.

Q. And this question, seventy-five:

"What was your understanding of the function of this bank account, and what efforts did you make to include it in the Alpine Dairy balance sheets?

"Answer: After the one time that I assisted Mr.

(Testimony of L. Hicks Taylor.)

Riig in making a deposit, that account, at no future time, ever came to my attention——"

Mr. Obenour: Pardon me.

Mr. LeSourd: You started reading there, Mr. Obenour. Will you finish reading?

Q. (Continuing) "It was handled by Mr. Erickson at Issaquah."

Mr. LeSourd: And "ever came to my attention in any way."

Q. (By Mr. Obenour continuing): "——ever came to my attention in any way, and was handled by Mr. Erickson [3873] at Issaquah.

"Mr. Eppler to Mr. LeSourd: 'Any point that you want to make, Mr. LeSourd, before we leave Daisy Ice Cream'?

"By Mr. LeSourd: I do not think his answer covers the whole of that question. You asked him what his understanding was as to the nature of the account, or something like that. I do not think he answered that."

And then your answer continued:

"It was for convenience the money was deposited in Peoples Bank to be immediately drawn on from Issaquah by Mr. Erickson, and it would not have anything to do as far as with the operation of Alpine books a separate bank account."

Was it your understanding then that it was being entered through the Alpine books as you answered in question seventy, or was it your understanding it was being handled through Issaquah as in seventy-five?

(Testimony of L. Hicks Taylor.)

A. I did not have a definite understanding at all of any of it.

Q. And you have no understanding of it now?

A. I have not.

The Court: When you read these answers, you [3874] were referring to the Daisy Ice Cream Company, is that correct?

Mr. Obenour: Yes, sir.

Mr. Keesling: May I inquire: Does counsel refer to Alpine Dairy or Alpine Ice Cream?

Mr. Obenour: I was reading a question put.

The Court: He was reading a question in a former interview.

Q. (By Mr. Obenour): This Daisy Ice Cream was purchased from Mr. Morris, as I understand it? A. F. M. Morris, yes.

Q. And were you in on that transaction at the time of the purchase?

A. I was doing some bookkeeping work for Mr. Morris at the time of the purchase.

Q. Do you recall the manner in which the sale was made?

A. My recollection is that there was some cash and a note, but I don't remember—haven't any remembrance of the amount, the total.

Q. Did you prepare the note?

A. It is possible.

Q. Did you keep track of the payments?

A. No. [3875]

Mr. Obenour: Excuse me a moment.

(Whereupon, there was a brief pause.)

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour): Then, at this same time, approximately that Mr. Forster testified, he became interested in a piece of land in the Denny Regrade area?

Mr. LeSourd: Objected to as not proper cross-examination, not a subject that forms any of the Government's case here, and we didn't go into this matter in chief.

Mr. Obenour: I believe it is relevant, if the Court please.

The Court: It is a preliminary question?

Mr. Obenour: Yes, sir.

Mr. LeSourd: This is an entirely separate transaction, as I understand it. The purchase of the real estate there has nothing to do with any part of the income which is alleged to have been evaded here, and which we covered in our direct examination.

The Court: Well, it is represented as being preliminary and the Court would overrule objection as to materiality at this time.

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour continuing): Do you recall that transaction, [3876] Mr. Taylor?

A. Very well.

Q. And were you—did you participate in the sale of this property to Mr. Morris?

A. Objected to, your Honor, improper cross-examination.

The Court: Objection overruled. It is still preliminary?

Mr. Obenour: Yes, sir.

(Testimony of L. Hicks Taylor.)

A. Yes, I participated in it.

Q. (By Mr. Obenour): And do you recall Mr. Forster's testimony as to the price that was paid for that property? That—if I recall, would you state whether or not this is your recollection: that he thought Mr. Morris wanted it badly, and they could get another one thousand dollars for it?

Mr. LeSourd: Objected to as improper cross-examination.

Q. (By Mr. Obenour continuing) Do you recall that testimony?

The Court: Objection overruled.

A. I don't have a recollection of the one thousand dollars. I believe it was five hundred more.

Q. (By Mr. Obenour): Five hundred more? What was the sale price of that property to Mr. Morris?

Mr. LeSourd: Same objection.

The Court: Objection overruled.

A. To the best of my recollection, it was $14,500.

Q. (By Mr. Obenour): And did you carry that on the tax return for Mr. Forster, that sale, that transaction, in the year 1946?

A. To the best of my recollection.

Mr. LeSourd: Just a moment. Same objection.

The Court: Objection overruled.

Q. (By Mr. Obenour): Handing you Exhibit 2, and referring to the schedule attached there, what would be page 3, and a notation "Real Estate," is that the item there, is that——

A. (Interposing) That would be——

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: (Interposing) Just a moment, if the Court please. May we, to avoid continual repetition, have a continuing objection to questions on this line of examination? It is improper cross-examination. This is a matter that we didn't go into in our direct examination. It isn't even involved in the case directly, and to permit counsel to go beyond [3878] the scope of proper cross——

The Court: (Interposing) I take it this goes to credibility?

Mr. Obenour: This goes to that matter.

The Court: On that basis, the Court is overruling the objection. It isn't that it is a material matter, apart from that.

Mr. LeSourd: Well, we may be faced with this many times in the course of this examination and if the Court is going to permit cross-examination into matters of this kind that are not a part of the direct examination, we want to be heard at some length on the matter.

The Court: I presume there is a limit. The Court will advise you now it will not permit unlimited cross-examination of this type.

Mr. Obenour: It is not our intention, if the Court please.

Mr. LeSourd: We ask for a continuing objection, then, to this line of questioning.

The Court: Yes, it may show.

Now, I don't want that to be to all questions, but when you think, as we are getting off of that, if

(Testimony of L. Hicks Taylor.)

you will make one objection and that will cover subsequent objections. [3879]

Mr. Obenour: Yes, I am speaking now of the items of the sale.

The Court: Yes.

Q. (By Mr. Obenour): Is that the——

The Court: (Interposing) Is there a question pending?

Mr. Obenour: I don't recall.

The Court: Do you wish to restate a question now?

Mr. Obenour: Yes.

Q. (By Mr. Obenour): You already referred to the schedule, page three of exhibit two, the tax return of Mr. Forster, 1946. Calling your attention to the item of real estate, is that correct, showing an acquisition in 1940? A. Yes.

Q. And a sale, is that correct, in——

A. (Interposing) 1946.

Q. And the amount of the sale is $14,500?

A. That is what appears here.

Q. And did you prepare that figure?

A. I did.

Q. And that was the selling price of that real estate? [3880] A. That is correct.

Q. And your computation, then, of the tax return includes the profit made on the sale of that real estate by Mr. Forster?

A. The profit shows $4500 on the sale.

Q. If the property was purchased for ten thousand, and sold for $14,500?

(Testimony of L. Hicks Taylor.)

A. That is correct.

Mr. Obenour: I ask that these be marked, please, as the exhibits next in order.

The Clerk: Plaintiff's Exhibits 286 and 287 marked for identification.

Strike 287. Plaintiff's Exhibit 286 marked for identification.

(Plaintiff's Exhibit No. 286 marked for identification.)

Q. (By Mr. Obenour): Handing you what has been marked for identification as Plaintiff's Exhibit 286, can you identify that, please?

A. Yes. This is an installment note from Mr. Frank L. Morris to the Issaquah Creamery Company, Incorporated, signed by Hans Forster, President.

Q. Is that from or to?

A. To Mr. Frank L. Morris from the Issaquah Creamery Company. [3881]

Q. And is that the note that you have been referring to, previously referred to, that was involved in the sale of Daisy Ice Cream from Mr. Morris to Mr. Forster?

A. From the appearance of the note, there is nothing to indicate that the real estate had any connection with this particular note.

Q. Is that the note to which you referred as being involved in the sale of the real estate, Daisy Ice Cream to Mr. Forster from Mr. Morris?

Mr. LeSourd: If your Honor please, I am com-

(Testimony of L. Hicks Taylor.)

pletely confused here, as to just what his question is.

The Court: I take it he'd better offer this.

Mr. Obenour: I was attempting identification as to whether this was the matter to which he referred.

The Court: Does he recognize the note? Do you identify it?

Mr. LeSourd: If the witness has seen the note before, and recognizes it.

A. I have seen the note. It is my belief that I typed it, but I am puzzled as to the application. The note itself——

Mr. LeSourd: (Interposing) Just a moment. We are [3882] just on identity now.

The Court: That is right.

The Witness: I can identify this page of it. The other page——

The Court: (Interposing) When you say "this page," what are you referring to?

The Witness: Well, the note itself. This note I recognize.

The Court: You recognize the top?

The Witness: The top, and I recognize this writing here as my penmanship, but this is what I am very puzzled about.

The Court: There are some entries above the writing that is yours?

The Witness: Yes. This writing is mine, but this is—while I have used that in working this calculation, I still—it doesn't bring back any recollection of what this note actually was for definitely.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Well, if the Court please, on the matter of identification, now, I submit he has identified the document. I suspect the reason they are being used is because he will be puzzled.

Mr. LeSourd: Well, the comment of Mr. Griffin——

The Court: (Interposing) Comment of counsel is [3883] not evidence, and the Jury will disregard it.

Mr. Griffin: I take it it is identified.

The Court: Are you offering it?

Mr. Obenour: Yes, sir; we will offer it.

Mr. Griffin: No objection.

Mr. Keesling: May I inquire the date?

Mr. Cox: May 1, 1944.

The Court: I understood, Mr. Griffin, you had no objection?

Mr. Griffin: No objection.

(Whereupon, there was a brief pause.)

* * * * * [3884]

L. HICKS TAYLOR

a defendant, upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination—(Continued)

Q. (By Mr. Obenour): Mr. Taylor, I believe you stated that when Mr. Forster purchased Daisy Ice Cream from Mr. Morris, that the payments for this transaction was by a portion being paid in

(Testimony of L. Hicks Taylor.)

cash, and the balance being paid by a note given by Mr. Forster to Mr. Morris, is that correct?

A. That is correct.

Q. And that was in 1944?

A. To the best of my recollection yes.

Q. And then this note was paid on, then, for a period of time, and did you keep track of those payments?

A. No, I had no connection with that.

Q. Did you prepare the note that showed this balance of the payment owed by Mr. Forster to Mr. Morris?

A. It is my recollection that I did, yes.

Q. And is that the balance, the face of Exhibit 286, that you so identified yesterday?

A. Yes, I prepared this note.

Q. That is Exhibit 286?

A. Exhibit 286, yes. [3912]

Q. May I see it, please?

Now, this is the note, then, that was given by Mr. Forster for the balance of the Daisy Ice Cream purchase price?

A. That would be my recollection of it, yes.

Q. Mr. Forster had acquired a piece of property in what is known as the Denny Regrade, had he not?

A. Yes, First West—or, First North and West Mercer.

Q. And what was the date that he acquired that?

The Court: You are talking about Morris?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: No, the date that Mr. Forster acquired that piece of property. Pardon me.

A. I have a recollection it was three or four years prior to this arrangement.

Q. (By Mr. Obenour): And that is the piece of property that was shown in Exhibit 2, the tax return of 1946 for Mr. Forster as being acquired for the price of ten thousand dollars, showing you the schedule attached to Exhibit 2? A. Yes.

Q. On the real estate?

A. The cost was $10,000, yes.

Q. And this property was subsequently sold to Mr. Morris, was it not? [3913] A. It was.

Q. Did you take part in this transaction of the sale of this Denny Regrade property from Mr. Forster to Mr. Morris?

A. It is my recollection that I did, yes.

Q. There was no other person that participated in this sale, was there, except yourself, Mr. Forster and Mr. Morris?

A. Just the three parties, yes.

Q. There were no attorneys involved?

A. I do not recall that there was.

Q. There was no real estate man involved?

A. I don't believe so.

Q. At that time, Mr. Forster then owed a certain balance on this note, Exhibit 286, is that correct?

A. The note displays that, I believe, yes.

Q. Was that transaction then of the sale of the Denny Regrade property from Mr. Forster to Mr.

(Testimony of L. Hicks Taylor.)

Morris handled by charging off the unpaid balance of the note, Exhibit 286, that Mr. Forster owed to Mr. Morris against the price of the property Mr. Morris was acquiring?

Mr. LeSourd: If the Court please, I take it the record shows a continuing objection by us to all the inquiry on this subject?

The Court: Yes, the record may so show. [3914]

Mr. LeSourd: On the grounds previously stated?

The Court: Yes. If you have any particular objection as to form, or something like that, you may state it.

A. May I have that exhibit before me, please?

Q. (By Mr. Obenour): Which one, the note?

A. That note.

Q. Exhibit 286.

(Whereupon, Exhibit was handed to the witness by Mr. Obenour.)

Mr. LeSourd: May we have the pending question read, your Honor?

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter:)

"Q. Was that transaction then of the sale of the Denny Regrade property from Mr. Forster to Mr. Morris handled by charging off the unpaid balance of the note, Exhibit 286, that Mr. Forster owed to Mr. Morris against the price of the property Mr. Morris was acquiring?"

A. The consideration for the property, definitely understood [3915] by Mr. Morris, Mr. Forster and

(Testimony of L. Hicks Taylor.)

Mr. Taylor, was $14,500. At a later date, or near the date application was made on this note for some type of a settlement on this note.

Q. (By Mr. Obenour): Would you answer the question, please, Mr. Taylor?

A. I felt that I did. That is the exact fact.

Q. Did Mr. Morris pay Mr. Forster anything for that property?

A. $14,500 was a contract price.

Q. Did Mr. Morris pay Mr. Forster any money in cash for that property? A. He did not.

Q. How was Mr. Forster paid for that property that he sold to Mr. Morris?

A. It was in a settlement upon the final note.

Q. Exhibit 286?

A. 286 was finally settled, yes.

Q. And then they charged the unpaid balance of the note, 286, against the purchase price Mr. Morris was to pay for the Denny Regrade property?

A. Not against the purchase price; an agreed closing price on the contract.

Q. Wouldn't that be the purchase price? [3916]

A. No, it was not. The purchase price was $14,-500.

Q. When did this transaction take place, the sale from Mr. Forster to Mr. Morris?

A. To the best of my recollection, sometime in January of 1946; in that neighborhood.

Q. January, 1946?

A. It was my impression it was. I am not sure.

(Testimony of L. Hicks Taylor.)

Q. There is a series of figures on the back of Exhibit 286 there starting from June, 1944——

A. (Interposing) Yes.

Q. (Continuing) ——through December, 1945, is it, or what is the last entry?

A. Well, it appears to be December of 1945.

Q. Those represent the payments by Mr. Forster upon the note to Mr. Morris?

A. Yes, they do.

Q. And what is the balance then from the last payment made by Mr. Forster to Mr. Morris on that note, Exhibit 286? A. $12,680.

Q. Now, that would be the balance, then, that Mr. Forster owed Mr. Morris for the Daisy Ice Cream Company?

A. That he would owe on this note.

Q. That is right, and that would be the balance of [3917] the unpaid purchase price for the entire property?

A. That I would not be sure of.

Q. Was it paid in cash, the other price, other than that note, was paid in cash, was it not?

A. That I am not sure of, no.

Q. That would represent the——

A. (Interposing) This represented a balance.

Q. A balance? A. A balance.

Q. You knew of no other?

A. I don't know what transaction Mr. Morris and Mr. Forster might have had that I knew nothing about.

(Testimony of L. Hicks Taylor.)

Q. But at the time this property was sold to Mr. Morris, it was $12,886?

A. That is what this record purports to show, yes.

Q. Now, that was then charged against the price Mr. Morris was to pay for the Denny Regrade property?

A. I have been trying to explain that. The contract price of that real estate was fourteen thousand five hundred dollars. Whatever settlement was made on this note was some other arrangement.

Q. You were there, weren't you?

A. I was there, yes.

Q. Those are your figures on the back there, aren't [3918] they?

A. That is correct, yes.

Q. You computed the balance, did you not?

A. That is right.

Q. And what figure did you use for the price Mr. Morris was to pay Mr. Forster for the Denny Regrade property?

A. You are putting into this question something that did not exist. The purchase price was $14,500.

Q. What price was Mr. Forster credited as receiving for the Denny Regrade property?

A. Now, the answer is that the settlement against this note was made on a basis of $15,500. It had nothing to do with the real estate.

Q. That was the price, was it not, that Mr. Forster was credited as receiving for the Denny Regrade property? A. It was not.

(Testimony of L. Hicks Taylor.)

Q. How did you reach the——

A. (Interposing) $14,000. That is something that a discussion was had on, and I don't just remember the details.

Q. You were present?

A. I was present, yes.

Q. You took fifteen thousand five hundred for the [3919] figure you used in your computation?

A. That was the settlement of this note, yes.

Q. Was that $15,500?

A. Fourteen thousand five hundred real estate and some adjustment of one thousand dollars.

Q. $14,500 real estate, and some adjustment of one thousand dollars? A. That is right.

Q. Does that adjustment show on there?

A. I probably did not write the details here. They are not here.

Q. There was no change in the price Mr. Forster was to pay Mr. Morris for the Daisy property, was there?

A. A reduction of one thousand dollars, yes.

Q. And you recall then that the price Mr. Forster was to pay Mr. Morris was reduced one thousand dollars? A. That is correct.

Q. A year and a half later, he is credited one thousand dollars, he did not have to pay?

A. You say a year and a half?

Q. Yes, according to the date of the payments on that note?

A. December, 1945, I believe, and January, 1946, are the dates. [3920]

(Testimony of L. Hicks Taylor.)

Q. What is the first date?

A. December, 1945.

Q. And a year then, a year later, he is credited an additional one thousand dollars?

A. It wouldn't be a year later. It would be in the following month.

Q. What is the date of the note, please?

A. I apologize, Mr. Obenour. May 1, 1944.

Q. And the date of this transaction was January, 1946. It would be a year and a half later he is credited with one thousand dollars?

A. That is correct.

Q. Was that explained to you when you used this 15-5 figure?

A. Yes, at the time it was discussed.

Q. Why wasn't the $12,886 figure reduced one thousand dollars then?

A. It could have been.

Q. Was it?

A. It wasn't, but it could have been.

Q. What figure did you use?

A. I used the lump sum of $15,500.

Q. Why did you add one thousand dollars then to the sales price of the Denny Regrade property if there was a credit to the note? [3921]

Mr. LeSourd: Objected to, your Honor. The note doesn't so show.

The Court: Objection sustained.

Mr. Obenour: He said the sales price was 14-5, and he used 15-5 in his computation.

(Testimony of L. Hicks Taylor.)

The Court: The Court sustained the objection. I suggest you may go ahead.

Q. (By Mr. Obenour): 14-5 was the sales price?

A. That was the contract price made between Mr. Forster and Mr. Morris.

Q. When was that agreed?

A. As to dates, I cannot say, but it would have been within this period.

Q. Within what period?

A. January, 1946.

Q. Did you have more than one meeting with Mr. Morris and Mr. Forster to discuss payment of this price? A. It is possible.

Q. Do you recall? A. No, I do not.

Q. It could have been that this price at the time that the Denny Regrade property price was agreed upon was also the same price at which you made these computations? A. It was not. [3922]

Q. Would you show the jury what those figures are on the back of that 286, please?

The Court: You wish the jury to see them?

Mr. Obenour: Yes, please.

The Court: You cannot expect the witness to go over there.

Mr. Obenour: I meant if he would indicate what they were.

The Court: The Bailiff will hand it.

(Whereupon, there was a brief pause, while the exhibit was handed to the jurors.)

The Court: If you have a question or two on this, you may ask it, Mr. Obenour and then we will

(Testimony of L. Hicks Taylor.)

go on to something else. We have had enough time on this.

Q. (By Mr. Obenour): What were you computing on those figures on the back of the note, Mr. Taylor? A. The settlement of the note.

Q. The settlement of the note? A. Yes.

Q. And the balance of two thousand some dollars there—or, three thousand some dollars—is what figure—is that the balance that Mr. Morris paid in cash? [3923]

A. As I recollect it, yes.

Q. Do you remember the figure?

A. I can't say exactly; $2,288, I believe.

Q. And Mr. Morris paid Mr. Forster that in cash?

A. I believe the record shows he received a check for it.

Q. So that Mr. Forster received credit then for the unpaid balance of his note of $12,886 and $2,288 in cash?

A. And $1,000 credit against the contract, on the note.

Q. The note was settled outright, wasn't it?

A. That was the final settlement on the check, yes.

Q. The unpaid balance of the note; he was credited with the unpaid balance of the note?

A. Correct.

Q. And that is $12,886? A. Yes.

Q. And he received $2,288 in cash?

A. Correct.

(Testimony of L. Hicks Taylor.)

Q. And that is a total of $15,500, is it not?

A. I don't know until I see the items of it.

The Court: That is a matter of addition. [3924]

Mr. Obenour: It is merely a computation of the note, whatever it is.

Q. (By Mr. Obenour): Then, Mr. Forster received, in cash and credit upon money he owed Mr. Morris, 15,500 and some odd dollars?

Mr. LeSourd: Your Honor, I object.

The Court: You have gone over that one-half dozen times. The Court will sustain the objection. Mr. Obenour, if we can get the questions without going over and over again.

Mr. Obenour: I was trying to get an answer.

The Court: If he can't answer, we will go along. It speaks for itself.

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): Regarding Finstad and Utgard, you were present when that—when Mr. Forster went to Conway to discuss that matter; first, to inspect the Finstad and Utgard property?

A. There were four or five of us there, yes.

Q. You were present? A. Yes.

Q. You inspected the books prior to purchase?

A. No, I did not. [3925]

Q. Did you go up to Conway with Mr. Forster before the meeting in Mr. Croson's office to inspect the property, and to inspect the books?

A. Well, I am not particularly clear as to what was before, or behind the situation.

We—the first indcation that Mr. Forster desired

(Testimony of L. Hicks Taylor.)

purchase of that was when Mr. Cook and Grant and Mr. Egeness and Mr. Forster and I went to Conway. It was my recollection it was the first time that I had knowledge of it.

Q. Did you inspect the books on that occasion?

A. The books were not there that particular time. I believe Mr. Black was working on them at that time, bringing them up to date.

Q. Did Mr. Forster discuss with you the purchase of this property before the actual purchase was made? A. It is possible.

Q. Did you believe Mr. Forster should purchase this property?

A. If I remember right, I did not think it was a very——

Q. (Interposing) Did you express your opinion to Mr. Forster that he should not purchase this property?

A. I am not positive, but I believe I did.

Q. Did Mr. Forster say anything to you, explaining [3926] why it would be a good deal to purchase this property?

A. I don't believe that I recollect his statements on it.

Q. When did you first—did you know that Mr. Cook, Mr. Grant, and Mr. Egeness were charging their salary accounts for payments upon their contract to Mrs. Finstad?

A. Might I ask you: Did you say, when did I?

Q. Did you know?

A. Not until I saw the books.

(Testimony of L. Hicks Taylor.)

Q. When was that?

A. I believe that was a later trip to Conway.

Q. Was that before or after Mr. Forster purchased Finstad and Utgard?

A. I am not positive of that. I was not in on all the transactions, so I am a little puzzled, as to dates on that.

Q. But you did know that that was the manner in which Mrs. Finstad was being paid prior to Mr. Forster's acquiring their interest?

A. I obtained the information from the books, yes.

Q. Whose idea was it to pay Mrs. Finstad on Mr. Forster's contract through the charging of salary of Mr. Egeness? [3927]

A. It was discussed and thought it was a proper way.

Q. By whom was it discussed?

A. Mr. Forster and Mr. Egeness and myself.

Q. When was that?

A. That date, I don't know as I can say. One of the times when we were there.

Q. No payments were missed from the time Mr. Forster acquired the property, was there, on the payment of the contract to Mrs. Finstad?

A. Not that I recollect.

Q. Mr. Forster resumed payments of that contract from the June meeting of 1943 when he acquired the property, did he not?

A. That is my recollection.

Mr. LeSourd: Just a moment. Object to the

(Testimony of L. Hicks Taylor.)

form of the question. It assumes Mr. Forster made the payments and the evidence in the record shows Mr. Egeness made the payments.

The Court: I believe it is well taken, Mr. Obenour.

Mr. Obenour: Yes, sir.

The Court: Do you wish to restate it?

Q. (By Mr. Obenour): The payments of three hundred dollars charged [3928] to Mr. Egeness's account began from the date that Mr. Forster entered into this contract to purchase this property, did it not? A. The records shows that, yes.

Q. And you were aware of it from that time?

A. Yes.

Q. Did you direct Mr. Egeness to make those entries?

A. Did I direct Mr. Egeness to make the entries?

Q. Yes, in his books, in the books kept there at Finstad and Utgard, charging his account?

A. He prepared all the checks.

Q. Did you instruct him to do that?

A. Well, that was the agreement.

Q. Did you instruct him or how did that come about?

A. When you say "instruct", you mean did I tell him how to write the checks?

Q. Yes. A. No, I did not.

Q. Did you tell him how to charge his account for these checks?

A. Well, he knew that he was going to charge his account.

(Testimony of L. Hicks Taylor.)

Q. And when you prepared the tax returns for [3939] Finstad and Utgard, you showed the full $7200 for Mr. Egeness? A. I certainly did.

Q. And also on Mr. Egeness' personal return?

A. I certainly did.

Q. Did you know that that was being paid upon Mr. Forster's contract?

Mr. LeSourd: Objected to, your Honor. The contract is in evidence and does not show any contract between Mr. Forster and Mrs. Finstad.

The Court: What is the question, Mr. Reporter?

(Whereupon, preceding question was read by the reporter.)

Mr. Obenour: Did he know that the payments were being made upon Mr. Forster's contract?

The Court: Is that the question?

(Whereupon, the following was read by the reporter:)

"Q. Did you know that that was being paid upon Mr. Forster's contract?"

Mr. LeSourd: The contracts are here in evidence, and shows that, Mr. Egeness's contract with Mrs. Finstad, but shows no contract between Mr. Forster and Mrs. Finstad.

The Court: The question is as to his knowledge of the payment.

Mr. LeSourd: But the question is as to [3930] his knowledge—I can't quote the question exactly —made on Mr.——

The Court: (Interposing) The objection is to the form of the question?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: That is correct, your Honor. The question says, "made on Mr. Forster's contract". The question then is contrary to the documentary evidence in the case.

The Court: Does that appear to be correct?

Mr. Obenour: No, sir; it is not. I would read the contract if counsel desires. He has indicated what he believes the contract to be.

Mr. LeSourd: The contract between whom?

The Court: What exhibit is that?

Mr. Obenour: It is Exhibit 145, agreement to assign agreement for sale of stock, dated the 3d day of December, 1941, and signed by Mr. Grant, Mr. Egeness, Mr. Cook and Mr. Forster, and Mary Finstad.

Mr. LeSourd: Just a moment. That is a misrepresentation, if the Court please. It isn't signed by Mary Finstad. It merely contains a clause at the bottom consenting to the agreement, and there is no contract between Mr. Forster and Mrs. Finstad. Mr. Egeness testified he was liable to Mrs. Finstad.

The Court: Isn't the question here whether Mr. [3931] Taylor knew that these payments were being applied to Mr. Forster's obligation?

Mr. LeSourd: That is what we are objecting to. There was no obligation by Mr. Forster to Mrs. Finstad.

The Court: What was it then that Mr. Forster had an obligation——

Mr. LeSourd: (Interposing) Mr. Forster had a contract with Mr. Egeness and his associates, and

(Testimony of L. Hicks Taylor.)

he had a contractural relationship with them, but he had no obligation to Mrs. Finstad, whatever.

The Court: However, the only matter here is whether some payments were applied to some obligation, regardless of who was obligated.

Mr. LeSourd: Then I have no objection.

The Court: Do you have the question? Do you want to state the question?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): Were you aware that these payments being charged against Mr. Egeness's salary account were being paid upon Mr. Forster's obligation?

The Court: I think that is objected to.

Mr. Patten: I don't think Mr. LeSourd's analysis of the contract is the issue at all. [3932]

The Court: We are not concerned about the obligation, but about knowledge. I will ask the question.

Mr. Taylor, were you aware, did you have any knowledge of payments being applied to this transaction of which Mr. Forster was a part?

The Witness: The checks were made out to Mrs. Finstad and charged to Mr. Egeness's salary account on the books of Finstad and Utgard.

Mr. Egeness, to my knowledge, was buying an interest in the Finstad and Utgard.

The Court: Is that clear?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): Why did you think Mr.

(Testimony of L. Hicks Taylor.)

Egeness was buying an interest in Finstad and Utgard?

A. The books displayed the exact transaction.

Q. What books displayed it?

A. Finstad and Utgard books.

Q. In what way?

A. The ledger account of Verne Egeness shows he was credited each month with $300.

Q. Then through the credit on your ledger you say it shows that he was purchasing an interest from Mrs. Finstad? A. That is correct.

Q. Were you present when this agreement between Mr. Forster and Mr. Grant and Mr. Egeness and Mr. Cook was made, Exhibit 145?

A. I attended one meeting at Mr. Croson's office. I did not read any of those agreements, and did not know exactly what they contained.

Q. Were you present when Mr. Forster paid checks to Mr. Cook, Mr. Grant and Mr. Egeness at this meeting for their share of their interest in this corporation?

A. You are referring to some particular date?

Q. Yes, sir, the time, that January—rather, June,—June 26, 1943.

A. Is there any evidence anywhere to show that I knew about it? I don't remember it.

Q. I am asking if you do know?

A. I do not remember it.

Q. Did you know that Mr.—were you present at the time the price was being discussed between

(Testimony of L. Hicks Taylor.)

Mr. Forster and Mr. Cook and Mr. Grant and Mr. Egeness?

A. I have no memory of that.

Q. Did you know Mr. Cook, Mr. Grant and Mr. Egeness had an interest in this Finstad and Utgard Company at the time Mr. Forster purchased it?

A. Yes, I knew that.

Q. From whom did you think Mr. Forster was purchasing his interest in the corporation? [3934]

A. Mrs. Finstad and Mr. Grant, Cook and Egeness.

Q. If you thought Mr. Forster was buying the interest of Mr. Egeness, Mr. Cook and Mr. Grant, then how did you believe Mr. Egeness was still buying a share of this company?

A. That was an agreement made.

Q. Between whom?

A. Mr. Forster, Mr. Egeness and myself present.

Q. Then, regardless of these written contracts and agreements and matters that took place at the Directors' meeting, at which you were present, did you believe Mr. Egeness was buying a 25 percent interest in Finstad and Utgard?

A. That is absolutely my belief.

Q. And what was the basis of that belief, again? Why did you think that?

Mr. LeSourd: Objected to as repetitious, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): How long did you be-

(Testimony of L. Hicks Taylor.)
lieve that Mr. Egeness was buying a 25 percent interest?

A. Until the day I left Seattle.

The Court: The question is, how long?

Mr. Obenour: Yes, sir. [3935]

Q. (By Mr. Obenour): And then you learned what to be the correct fact?

Mr. LeSourd: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): And then, from 1944—1943 until 1950, you believed Mr. Egeness was buying a 25 percent interest in the stock through these regular quarterly payments of $300?

A. That is correct.

Mr. Obenour: May I have exhibits 17 and 21?

(Whereupon, exhibits were handed to Mr. Obenour by the clerk.)

Mr. Obenour: And 21-2-3-4 and 5.

(Whereupon, exhibits were handed to Mr. Obenour by the clerk.)

Q. (By Mr. Obenour): I believe you stated that the other information contained in these tax returns you prepared did not pertain to actual figures, was from your own information, is that correct? The other information other than the actual figures contained in the tax return?

(Testimony of L. Hicks Taylor.)

The Court: Would you read that question, Mr. [3936] Reporter?

(Whereupon, the preceding question was read by the reporter.)

Mr. LeSourd: Excuse me, your Honor, I would suggest that when questions of this sort are put by counsel, that he show the witness what he is inquiring about. He holds up some document and then asks the witness with regard to it.

The Court: It depends on the question. Would you read the question again, Mr. Reporter?

(Whereupon, preceding question was read by the reporter.)

The Court: You may strike the question.

Q. (By Mr. Obenour continuing): Then, in 1945, when you prepared Exhibit 17, the tax return for Finstad and Utgard, you believe Mr. Egeness held 25 per cent interest in this company?

Mr. LeSourd: Objected to, your Honor, assuming he held it. The testimony was that Mrs. Finstad held all the stock.

The Court: Hasn't he stated he believed that from the time it started until 1952?

Mr. Obenour: Yes, sir.

The Court: Hasn't that been answered? [3937]

Mr. Obenour: Yes, sir; he stated it was his belief through that time.

The Court: You are just re-asking the question?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: No, sir; I am asking him, at the time he made out this return.

The Court: What date is that?

Mr. Obenour: All right, I will withdraw the question, then.

The Court: What date is that exhibit?

Mr. Obenour: This is the tax return for 1945, dated 4th of February, 1946.

The Court: That happened between the dates?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): Why, then, did you show no interest in the tax return for 1945 as held by Mr. Egeness on that return?

A. Mrs. Finstad held all the stock.

Q. She held all the stock? A. Yes.

Q. For how long a period?

A. I have heard some testimony about it being issued since coming to court.

Q. Did she hold it, according to your belief, until 1950? A. She did. [3938]

Q. And that was true when you prepared the return for 1946?

A. Yes, each year.

Q. And, then, why did you show, in 1948, that Mr. Egeness held one percent of the common stock and also in 1949 that Mr. Egeness held one percent of the common stock in the tax return?

A. He held a qualifying share, is my understanding.

Q. Is that one percent?

A. I didn't say. That doesn't say one percent.

(Testimony of L. Hicks Taylor.)

It does say, but one share is what it was intended for.

Q. The tax return shows one percent?

A. It does, by the way it is written, yes.

Q. Why didn't you show the 25 percent that you believed he was buying?

A. Would it make any difference?

Q. You say——

The Court: (Interposing) That isn't the question, Mr. Taylor.

A. (Continuing) The stock was all in Mrs. Finstad's name, under her control. I don't see why I should put in 25 percent.

Q. (By Mr. Obenour): Then, if that is true, if she held it all, [3939] why did you show him as owning one percent?

A. I think my intention was one share.

Q. Then she wouldn't own all of it, would she?

A. She could own it all by endorsement of certificate.

Q. Do you think Mr. Forster owned that?

A. Do I think he owned that?

Q. Yes, do you think Mr. Forster owned that share, or any interest, in Finstad and Utgard between the years 1945 to 1949?

A. He had no shares in his name.

Q. Did he own any interest, to your knowledge, in Finstad and Utgard between the years 1945 and 1949?

A. He owned a contingent interest in it.

(Testimony of L. Hicks Taylor.)

Q. Who owned Finstad and Utgard—to your knowledge—in 1945 to 1949?

Mr. LeSourd: Objected to as repetitious, your Honor.

The Court: Objection sustained.

Q. Would you differentiate, please, your idea of contingent interest in the ownership of Finstad and Utgard? A. I don't believe I understand.

Q. Is this one percent Mr. Egeness owned a contingent interest? [3940]

Mr. LeSourd: Object to the form of the question. He testified it was one share, and not one percent.

Mr. Obenour: In the tax return, it is one percent.

Mr. LeSourd: I think the only thing typed in is a "1". The printed matter may have a percentage. The question is improper as put.

The Court: The objection may show. If you wish to restate it, you may.

Mr. Obenour: It is recess time.

The Court: Do you want to let the question go? All right. Ladies and Gentlemen of the Jury:

We will take the mid-morning recess, and the Court asks you to read on this occasion the admonition given to you on earlier occasions of this character. You may now be excused, and the Court will remain in session while you leave.

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 11:01 o'clock a.m., a recess was had in the within-entitled and numbered cause until 11:17 o'clock a.m., April 15, 1954,

(Testimony of L. Hicks Taylor.)

Q. Did you believe Mr. Forster had an interest in this period 1945 to 1949?

A. He had a contractual interest, yes.

Q. How much? A. I don't know.

Q. Did you have any idea?

A. Somewhat, yes.

Q. What was your idea?

A. I have a recollection of a purchase price of some sixty-seven thousand dollars.

Q. And what was he purchasing?

A. The contractual interest of the three gentlemen mentioned, Cook, Grant and Egeness.

Q. Contractual interest in what?

A. In the capital stock.

Q. What capital stock?

A. Finstad and Utgard. [3944]

Q. How much of it?

A. The escrow gave him the right to purchase it all.

Q. So, you believed he was purchasing all of the stock at the same time Mr. Egeness was purchasing 25 percent of it?

A. That was a separate agreement.

Q. With whom? A. Mr. Egeness.

Q. Who was Mr. Egeness purchasing his 25 percent from?

A. He was paying the contract to Mrs. Finstad through the books of Finstad and Utgard.

Q. Was he buying his 25 percent then from Mrs. Finstad?

(Testimony of L. Hicks Taylor.)

A. I would say "yes", because all the stock was in Mrs. Finstad's control.

Q. And then, who was Mr. Forster buying from?

A. Mrs. Finstad.

Q. Then, Mrs. Finstad was selling 25 percent to Mr. Egeness and 100 percent more to Mr. Forster?

A. Through separate agreement, Mr. Egeness was purchasing his shares of stock.

Q. How could Mrs. Finstad sell 125 percent of the stock? [3945]

Mr. LeSourd: Objected to as argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you believe Mr. Forster had 100 percent interest in the stock?

A. Subject to Mr. Egeness' agreement.

Q. Then, why, in Exhibit 123, the financial statement of Mr. Forster for February 29, 1948, did you show Mr. Forster as being the sole owner of Finstad and Utgard?

A. He was the sole owner of an agreement, yes.

Q. Does that say "of an agreement", or does that say "sole owner of Finstad and Utgard"?

A. It says "sole owner".

Q. Of what?

A. Of Finstad and Utgard.

Q. December 31, 1948, in the financial statement of Mr. Forster prepared by you, Exhibit 122, how was that shown? A. "Sole owner".

(Testimony of L. Hicks Taylor.)

Q. In Exhibit 121, the financial statement for December 31, 1949, how was it shown there?

A. "100 percent".

Q. Those were prepared by you?

A. Yes. [3946]

Q. How, then, can you report to the Peoples Bank, for whom those financial statements were prepared, that Mr. Forster was a sole owner of Finstad and Utgard in the same years when you say he had no interest? A. He had——

Mr. LeSourd (Interposing): Just a moment, Mr. Taylor. I will object to the question.

The Court: Objection sustained.

Q. (By Mr. Obenour): How can you show he is the sole owner in those periods?

Mr. LeSourd: Same objection, argumentative.

The Court: Objection sustained.

Q. (By Mr. Obenour): Why did you show he owned 100 percent of the stock at that time?

A. It doesn't show sole owner of stock. He is sole owner of a contractual arrangement with Mrs. Finstad, and the bankers were thoroughly familiar with that, because it was thoroughly explained to them.

Q. Where? A. At the bank.

Q. What was thoroughly explained to them?

A. Thoroughly explained to them the purchase [3947] of Finstad and Utgard.

Q. That Mr. Egeness was purchasing 25 percent of the stock?

(Testimony of L. Hicks Taylor.)

A. I don't know that they had any connection with that. It was none of their business.

Q. Well, what was thoroughly explained to the bank then?

A. The contractual arrangement of Mr. Forster to purchase Mrs. Finstad's stock that was in control of Mr. Cook, Grant and Egeness.

Q. And also the stock of Mrs. Finstad?

A. That is what I stated.

Q. Who did explain all this, do you know?

A. Mr. Forster discussed it with them before he discussed it with me, is my opinion.

Q. How do you know this?

A. It is my recollection that some of the bankers talked to me about it before I knew he was going in it.

Q. About what; what did they tell you?

A. That Mr. Forster was interested in Finstad and Utgard.

Q. 100 percent?

A. No percentage discussed.

Q. Did they tell you they understood Mr. Egeness was buying 25 percent? [3948]

A. I don't know that the bank ever knew it.

Q. Well, if the bank didn't know it, then why did you show 100 percent interest in each of those various statements for Finstad and Utgard?

A. It is possible that the bank asked me to put it that way.

Q. Is it true that they did?

A. I don't know; I wouldn't say.

(Testimony of L. Hicks Taylor.)

Q. Is there any basis that it would be possible for your statement? A. I don't know.

Q. Mr. Egeness' interest is not shown any place there, is it?

A. I believe that it is not.

Q. Do you remember a discussion with Mr. Hagstrom?

A. I discussed items with Mr. Hagstrom, yes.

Q. Do you remember a discussion of Mr. Forster's net worth with Mr. Hagstrom?

A. It is possible.

Q. Do you remember telling him that Mr. Forster owned 100 percent interest in Finstad and Utgard? A. That I do not remember.

Q. December 31, 1949, the figures for that year were prepared by you at what date again, please?

A. In January. [3949]

Q. For Issaquah Creamery?

A. In January, 1950.

Q. Where? A. At Issaquah.

Q. And how did you go about preparing those figures?

A. The usual monthly preparation.

Q. And as I understand it then, you went to Issaquah and got your regular figures from Mr. Erickson and compiled your work sheet, which is Exhibit 259-A?

A. May I have the work sheet, please?

Q. Pardon me, 259.

(Whereupon, exhibit was handed to the witness by Mr. Obenour.)

(Testimony of L. Hicks Taylor.)

Q. (Continuing): Is that correct?

A. I don't know what your question is, I am sorry.

Q. Is that the work sheet you prepared?

A. This is——

Q. (Interposing): January, 1950, at Issaquah Creamery, compiling the figures you obtained from Mr. Erickson for the year for that corporation?

A. Yes, this is the work sheet.

Q. You prepared it from the books?

A. I did.

Q. And are all those figures in those columns [3950] your original figures?

A. I don't see anybody else's figures on here.

Q. In other words, you would go through each of those columns and make the entries listed there?

A. This is a trial balance from the ledger, yes.

Q. And referring now to—this is a trial balance on the left-hand side of Exhibit 259?

A. Yes.

Q. And you would list your assets, cash, bank, notes receivable, and so forth, and make your entries directly opposite?

A. That is correct.

Q. And, similarly, for the right-hand side, is the profit and loss statement for that date for that company? A. That is correct.

Q. And you would put all of those entries in?

A. Yes.

Q. Now, these others in the blank column on

(Testimony of L. Hicks Taylor.)

your left-hand side on your balance sheet side were put in after that?

A. That is correct.

Q. There are five entries, and they were all put in after you completed this, is that correct? [3951]

A. After I completed it?

Q. Yes.

A. This is complete after arriving at those figures.

Q. Well, at the time you first worked out this work sheet, these figures were not entered in that column, were they; the five figures in the blank column there?

A. No, they were not there.

Q. So, except for these five figures, this was the page in this form that you completed on that original date at Issaquah without discussing with anyone? This was your original work sheet?

A. That was the original work sheet, yes.

Q. And it was in that form that you then discussed it with Mr. Forster and Mr. Erickson?

A. That is correct.

Mr. Griffin: I wonder if he could identify those five figures? It means nothing.

The Court: Yes, could you do that?

Mr. LeSourd: If your Honor please, I would like to ask whether his inquiry is in this form even after these changes? His questions are very ambiguous as to what he means by "this form". [3952]

The Court: I think, first, you can identify the five figures. Your objection is to the question?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Yes, it is ambiguous, whether he means this form as it exists after the corrections were made, or whether he means before the corrections were made.

The Court: Mr. Obenour, if you will relate the five figures to the exhibit and then if you will restate your question.

Mr. Obenour: The five figures in the column in the center of the page, and to the right, or the left-hand portion, designated "trial balance" opposite real estate there, $32,978.70; and on the line for improved, $230,670.32; and in the line to the right of the column, the thirty-two thousand figure, the inventory on that line and the Alpine Ice Cream for the second, and then on the line of accounts payable, $51,570.76; there are milk drafts, ten thousand; taxes paid, $197,039.06.

The Court: Does that identify them sufficiently?

Mr. Griffin: Yes, your Honor.

The Court: Now, do you have a question, Mr. Obenour? [3953]

Q. (By Mr. Obenour): Were all of the other figures in the regular columns that you have referred to in the trial balance and the profit and loss placed there at the time you first completed your work upon this work sheet on the first date you went to Issaquah?

Mr. LeSourd: I suggest that the document be handed to the witness so that he can examine it to see if any changes were made.

(Testimony of L. Hicks Taylor.)

(Whereupon, document was handed to the witness by Mr. Obenour.)

Mr. LeSourd: And may I suggest that counsel in the question refer to specifically what figures he is talking about. There are many figures on that sheet, and some of them have been changed, and corrections made.

The Court: As I understand, you are referring to all entries except the five you referred to?

Mr. Obenour: Yes, sir.

A. This is Schedule 259. The original trial balance on the two left-hand columns were taken from the general ledger. This is my trip to Issaquah on approximately the 28th of January, 1950. From those figures, I prepared a balance and a profit and loss statement showing or displaying a year's profit.

Do you have any further question there? [3954]

Q. (By Mr. Obenour): Those figures then were entered by you on that date that you made up that sheet? A. Yes, I prepared this sheet.

Q. And with the exception of those five figures previously referred to was in the form that you had that document when you talked to Mr. Forster and to Mr. Erickson? A. That is correct.

Q. And that was in the same afternoon after you had completed your work sheets?

A. That was in January, 1950, yes.

Q. Mr. Forster was present and Mr. Erickson was present? A. As I remember, yes.

Q. What did you say to Mr. Forster concerning your work sheet?

(Testimony of L. Hicks Taylor.)

A. I discussed the profit and loss at that time with Mr. Forster and the balance sheet and to the best of my recollection, it showed a sizable profit.

Q. What was that profit?

A. As I remember it, it was around $101,000 or $100,000.

Q. Do you have any figures to substantiate your recollection, or is that strictly your recollection?

A. I am strictly speaking from recollection. I could give you the exact figures by adding them together, if you would like me to.

Q. Would it show there on your work sheet what the figure was at that time?

A. No, it would take two figures, I would have to add them together.

Q. What figures would those be?

A. The profit on this statement shows $49,725.48; the reduction was $51,578.76.

Q. Where was that figure, the $51,000 figure?

A. It shows in a column, an explanation column, or an adjustment column, that generally shows on a work sheet.

Q. Would you point it out, please?

A. The figure that I am using appears right here, on this work sheet, and the amount is $51,578.76. It is very faint, right there, (indicating); right at that point.

Q. That is one of the five figures that we have previously identified?

A. That is one of the five figures in the column.

(Testimony of L. Hicks Taylor.)

Q. What did you tell Mr. Forster then as to what the net profit for the year 1949 was?

A. $101,304.24. [3956]

Q. What did Mr. Forster say?

A. He said it was impossible; that nobody was making any such money, and that we were 'way out of line.

Q. Did he say anything else?

A. He said that he felt maybe he would have to get some other accountant to check it over, and said there was some bad mistake somewhere, and I immediately told him that those figures agreed with my ledger, if there was any error, that if he and Harold would check them over, I would hold the ledger open so that adjustments could be made.

Q. Did you tell him that your figures were correct or not?

A. I said "They are correct, according to my ledger."

Q. And what did he say?

A. He said he was sure there was something wrong.

Q. Did he say anything else; is that all he said?

A. Well, except that he thought he would get some other accountant to check it over.

Q. What did you say then when he told you he would get another accountant to check it over?

A. I do not remember my remarks. [3957]

Q. You discussed this work sheet on this occasion the same way you had discussed your other work sheets that you had prepared, didn't you?

(Testimony of L. Hicks Taylor.)

A. That is the usual practice, yes, sir.

Q. And had he ever contested any of your figures before?

A. Oh, I presume so. I don't have any great recollection of it. We have discussed them.

Q. Do you remember whether or not he ever had? A. Oh, I would say he had, yes.

Q. You discussed every work sheet with him, didn't you?

A. As a—take it as a whole, we did. We might have missed one now and then.

Q. You would go out there on the days he would be present so that you could discuss it?

A. That was the intention, yes.

Q. And you do not remember any other time he contested your figures?

Mr. LeSourd: I object as repetitious, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): Did Mr. Forster have any figures to show why your figures were wrong?

A. He had the work sheet.

Q. Did he have any figures of his own to show that your figures were not correct?

A. That, I cannot recollect.

Q. Did he say anything why he thought your figures were wrong?

A. I have recollection of him saying that the percentage, or something, was out of line, but I didn't follow it very closely.

(Testimony of L. Hicks Taylor.)

Q. Mr. Forster was interested in knowing what his net profits were, was he not?

That is the reason you were preparing these statements?

A. That was the intention and purpose.

Q. Why was Mr. Forster then so upset about finding out he had made so much more money than he thought he had?

A. That would be hard for me to explain.

Q. Did you ask him why he would hire an accountant because he made, according to your figures, more money than he thought?

A. I didn't discuss it or argue the point with him.

Q. Did he make any statement about why he was so upset about making more money? [3959]

A. I don't recollect any definite conversation about it.

Q. Did Mr. Erickson say anything about the fact that he had made more money than he thought?

A. I don't believe Mr. Erickson commented.

Q. And Mr. Erickson simply left at that time, is that it?

A. The way it was left was that if Mr. Forster and Mr. Erickson found that I was in error, that I would hold the ledger open and make the proper adjustments.

Q. And you left your ledger open?

A. I did.

Q. For how long?

(Testimony of L. Hicks Taylor.)

A. To the best of my recollection, it was early in March.

Q. And then what happened?

A. I 'phoned Mr. Forster and asked him if there were any changes, if I should go ahead, and he said to get in touch with Mr. Erickson, that some changes had been found.

Q. Did you do that?

A. I went—I called Mr. Erickson and went to Issaquah.

Q. When was that? [3960]

A. The exact date, I am not sure of. It was in March.

Q. What happened when you got to Issaquah?

A. Mr. Erickson gave me the figures that show on this explanation column.

Q. What are those figures now that he gave you?

A. Ten thousand dollars to charge to milk drafts; and $51,578 to accounts payable.

Q. And you put those on the side?

A. I made a memorandum of them to make my changes, yes.

Q. What changes did you then make?

A. I revamped my balance sheet and profit and loss statement to include those figures.

Q. Did you alter the original figures that you had in the balance sheet opposite those additional figures?

A. I altered the ones that those figures fitted, yes.

Q. What alterations did you make?

(Testimony of L. Hicks Taylor.)

A. Erased the figures there, and——

Q. (Interposing) Where is that, please?

A. There on milk drafts, that must have been forty-five, and it was changed to fifty--five.

Q. And the others? [3961]

A. The accounts payable were increased by the amount of fifty-one.

Q. And then any other changes made?

A. The inventory was changed by ten thousand dollars.

Q. In what way?

A. By increasing from "12" to "22" thousand.

Q. What was the figure opposite the inventory then?

A. Oh, there was an item of $32,978. I don't know where I got that, except that I must have misunderstood Mr. Erickson, because he called my attention to it.

Q. When did you put that $32,000 figure down?

A. I wrote it down that same time.

Q. When Mr. Erickson told you? A. Yes.

Q. And he didn't correct it at the time you put it there?

A. He corrected it when I showed him these figures.

Q. He corrected it when you showed him these figures?

A. Yes, and I didn't go back and change the "1" in the explanation column, the inventory, to read [3962] $22,978.90.

(Testimony of L. Hicks Taylor.)

Q. And you raised the inventory, rather than lowered it? A. That is correct.

Q. Even though the figure thirty-two thousand shows opposite?

A. The thirty-two thousand was taken in error.

Q. And the other figure, the fifty-one thousand there, you used to increase your accounts payable, is that correct?

A. And the purchasing account, yes.

Q. And the purchase account; and milk drafts were increased by the ten thousand figure?

A. And that increased the purchases.

Q. And yet you say you did not use the thirty-two thousand figure, to reduce it to 22, but rather used another figure of correcting the twelve thousand original?

A. I used the correct figure that Mr. Erickson said the inventory was.

Q. All right, sir. Why did you make these changes?

A. I was told that those corrections were necessary to display the true profit.

Q. By whom were you told this? [3963]

A. Mr. Forster and Mr. Erickson.

Q. Was Mr. Forster there when he told you this; did he tell you this?

A. He told me there was changes to be made, yes.

Q. Did he tell you that this fifty-one thousand figure and the ten thousand dollar figure should be used to show a true profit?

(Testimony of L. Hicks Taylor.)

A. I don't know that he mentioned exact figures.

Q. When did he tell you those changes should be made? A. The day I 'phoned him.

Q. And you are referring only to the time you 'phoned? A. That is the date he told me.

Q. Was he present when Mr. Erickson gave you these figures? A. No, he was not.

Q. Mr. Erickson gave you these figures, then?

A. That is correct.

Q. And you used these figures in changing your balance sheet and profit and loss?

A. And in preparing the income tax return, yes.

Q. And why did you think that this $61,000 figure should be used to show a true profit and loss?

A. Would you kindly give me exhibits showing 1948 Issaquah Creamery Company tax return and 1949 Issaquah Creamery Company tax return, please?

Q. Yes, sir. You wanted the tax return?

A. The tax return, the corporation tax return.

Q. Exhibits 13 and 14.

(Whereupon, exhibits were handed to the witness by Mr. Obenour.)

A. I believe there was a question before. I have forgotten how it was put, Mr. Obenour.

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter:)

"Q. And why did you think that this $61,000

(Testimony of L. Hicks Taylor.)

figure should be used to show a true profit and loss?"

A. (Continuing) When I returned to my office, I took from the file the copy of this 1948—the changes were on 1949—and I might explain that I am looking at Exhibit No. 12, the income tax return of the Issaquah Creamery, Incorporated, for the year 1948, and I am reading to you from the sales—the sales that year were $2,515,731.64. The net profit, after deducting the cost of sales and cost of goods sold—that means inventory plus purchases less inventory to arrive at the cost of goods sold. Cost of goods sold showed [3965] $2,216,589.13—the cost of goods sold taken from sales leaves a gross profit of $297,142.51. That was a profit—gross—for 1948.

I am now going to read you from Exhibit 14, which is the annual tax return of the Issaquah Creamery Company, Incorporated, for the year 1949. The sales were $2,359,544.27, approximately $190,000 less than they were in 1948. The costs of goods sold were $2,034,235.32 with a gross profit of $325,308.95 which was some $28,000 greater than the year 1948.

When I examined that I felt that Mr. Forster's decision on the profit was well taken, and did not feel that there was any error in the 1949 figures.

Q. You did that when you got back to your office? A. I did that, yes.

Q. But you had changed the figures on your work sheet before you got back to your office?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. Did you say anything to Mr. Forster about his finding, or their finding, Mr. Erickson and Mr. Forster, that your figures were off $61,000?

A. Did I say anything?

Mr. Keesling: We object to that, that his figures were off $61,000. The figures given him were off—I object to the form of the question. [3966]

The Court: Objection sustained.

Q. (By Mr. Obenour): Did you say anything to Mr. Forster objecting that your computations of the profit and loss should be reduced $61,000?

A. When Mr. Forster came to sign the tax return in my office, I thoroughly discussed this whole situation with him.

Q. And then you had a question, though, before you looked at your tax return, that those adjustments should be made? A. A question?

Q. In your mind, you had a question in your mind before you looked at the 1948 tax return that those adjustments should be made to the 1949?

A. I accepted them as being O.K.

Q. Why did you look at the 1948 return?

A. Just for comparison to see what the situation was. Mr. Forster had definitely stated that the percentage was out of line.

Q. Had there been an adjustment in 1948?

A. No, not to my knowledge; not to my remembrance.

Q. Why did you think 1948 should be right, rather than 1949?

(Testimony of L. Hicks Taylor.)

A. Mr. Forster stated at that meeting that the relative [3967] sale and the relative profit conditions were very similar in both years.

Q. Could there have been a similar adjustment at the end of 1948 that could have given that figure you entered there?

A. There was no adjustment, so far as I know, in 1948.

Q. You didn't look at the books to see whether or not they compared to 1948 and 1949?

A. I always prepared these returns from the books so I knew they were.

Q. Did you have an explanation what the fifty-one thousand dollar figure was?

Mr. LeSourd: Excuse me, your Honor. Was that question "do you" or "did you"?

Mr. Obenour: Did you.

A. They were given to me as statements not entered on the books.

Q. (By Mr. Obenour): What was told to you in addition to the figures themselves?

Mr. Griffin: By whom?

Q. (By Mr. Obenour continuing): And by whom?

A. Well, Mr. Forster said that some errors had been [3968] found, and so had Mr. Erickson. They both did.

Q. Mr. Erickson gave you this fifty-one thousand and ten thousand dollar figure?

A. He gave me the figures, yes.

Q. How did he give it to you?

(Testimony of L. Hicks Taylor.)

A. He gave me the amounts, and I wrote it on the work sheet.

Q. Did he tell them to you, or did he have them written down? A. That I don't remember.

Q. How did he tell you to make your entries for these figures?

A. He gave me the figures, and I wrote them on the work sheet.

Q. Did he tell you what they were?

A. Not the particular ones, no.

Q. Did he tell you just to add accounts payable fifty-one thousand? A. That is right.

Q. Did he say whether it was one amount, or not? A. I don't remember that.

Q. He just gave you a figure, fifty-one thousand plus? A. That is right.

Q. And said to increase accounts payable?

A. That is right.

Q. And similarly, he said milk drafts, just add ten thousand to milk drafts?

A. I think he made some statement about an adjustment of five in November and five in December.

Q. Did you see the adjustments of five in November and five in December?

A. I did not, Mr. Obenour.

Q. Did you see the three's that were on the ledger?

A. I didn't look at Mr. Erickson's books. I was working under great pressure then, so I didn't spend much time.

(Testimony of L. Hicks Taylor.)

Q. You just took the two figures and added them as Mr. Erickson told you? A. I did.

Q. And put them on your work sheet?

A. The records were being furnished to me.

Q. Because he said these were left off?

A. That is right.

Q. And went back and looked at the tax return?

A. Compared those.

Q. You were president of the State Association of Licensed Accountants for two terms?

A. Yes. [3970]

Q. And you had kept books since 1919?

A. Yes.

Q. And you didn't figure there was anything wrong with your figures for a year being off sixty-one thousand dollars?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Mr. Obenour: I ask that this be marked, please.

The Clerk: Plaintiff's Exhibit 287 marked for identification.

(Plaintiff's Exhibit 287 marked for identification.)

Q. (By Mr. Obenour): I hand you Plaintiff's Exhibit 287 and ask if you can identify it, please?

A. It appears to be my working papers for the year 1949.

Q. For what company?

A. Issaquah Creamery Company.

Q. Are they your work papers?

(Testimony of L. Hicks Taylor.)

A. I would say, in most cases, yes, that is correct.

Mr. Obenour: All right, sir, thank you.

We offer it at this time, if the Court please.

Mr. Griffin: No objection.

(Whereupon, there was a brief pause.)

Mr. LeSourd: We make the same objection we have to previous documents of this sort, your Honor.

The Court: That is not the last objection? That is the objection as to possession?

Mr. LeSourd: Yes, that is right, your Honor.

The Court: If that is the only objection, the Court would overrule that in line with the other rulings of the Court.

May I see that a moment?

And will be admitted.

(Plaintiff's Exhibit No. 287 admitted in evidence.)

Mr. LeSourd: Admitted, your Honor?

I wish to raise this additional matter, that these are being offered now in connection with the testimony of the year-end 1949 adjustments, and I wish it be understood they were not so limited. If not so limited, we would have other objections to make.

Mr. Obenour: They are for the year 1949.

Mr. LeSourd: For the year-end adjustment?

Mr. Obenour: Yes.

The Court: Even though they cover other periods why you are offering them for that [3972] purpose?

(Testimony of L. Hicks Taylor.)

Mr. Obenour: It is my understanding they are admitted for that period.

The Court: They are admitted, and you have other general objections which you stated first, and the Court overruled.

Mr. LeSourd: Yes.

The Court: And I take it there is no other purpose than you indicated, you have no other objection?

Mr. LeSourd: No, as long as they are admitted subject to the limitation that they are bearing only on the December 31st adjustment.

Q. (By Mr. Obenour): Handing you Plaintiff's Exhibit 287, and calling your attention to the bottom-most sheet, is that your trial balance for the Issaquah Creamery for the month of January 31, 1949? A. Yes.

Q. Was this prepared in a similar manner to that you described you prepared the December 31st, 1949, work sheet? A. Yes.

Q. For Issaquah Creamery? A. Yes.

Q. And, at the end of your preparation, you explained your work sheet to Mr. Forster? [3973]

A. We discussed it, yes, and went through it.

Q. And did you show what the net profit was at the end of January 31, 1949, for that month?

A. Yes.

Q. What was the net profit?

A. $18,544.84.

Q. Did he object to the profit he made in January, 1949, of $18,000-plus?

(Testimony of L. Hicks Taylor.)

A. Well, it is a little hard to remember conversations. Sometimes he would say that that was a little strong, and such as that.

Q. Strong in what way?

A. A little high for the period, or something to that effect.

Q. Would you make adjustments?

A. Not unless he instructed or directed it.

Q. Did he instruct you or request you to make other adjustments?

A. Oh, it is hard to name any particular item.

Q. Can you remember any other times Mr. Forster instructed you to make any other adjustments because of the net profit figure?

A. No, not definitely. I haven't a remembrance of it.

Q. And the next page? [3974]

The Court: That page you are referring to was November?

Mr. Obenour: No, sir; January 31, 1949.

Q. (By Mr. Obenour continuing): And the next figure, is that the trial balance you prepared for Issaquah Creamery for the month ending February 28, 1949? A. Yes.

Q. And was this prepared in the same manner as the work sheet for December 31, 1949?

A. Yes.

Q. At Issaquah Creamery Company?

A. Yes.

Q. And did you discuss it with Mr. Forster when it was completed? A. Yes.

(Testimony of L. Hicks Taylor.)

Q. And did you discuss the net profit figure at the end of February, 1949?

A. It is my recollection we did, yes.

Q. And what is the net profit for the end of February, 1949, for the two months in 1949?

A. $37,598.07.

Q. Did Mr. Forster object to that net profit figure? A. I don't remember that he did.

Q. Did you make any adjustments after that?

A. No other adjustments were made.

Q. The next page of that, is that the trial balance prepared by you for Issaquah Creamery for May 31, 1949—at one place—and 1948 in the other?

Mr. LeSourd: March or May?

Mr. Obenour: May 31, 1949.

A. Yes.

Q. (By Mr. Obenour): And did you prepare this in a similar manner? A. Yes.

Q. Did you discuss it with Mr. Forster?

A. In our usual discussion, yes.

Q. And did you discuss the net profit figure?

A. Yes.

Q. And what is the net profit figure for that portion of the year, 1949, as of May 31st?

A. It showed $83,465.50.

Q. $83,465.50? A. Yes.

Q. And that was for May 31st?

A. Yes.

Q. Five months; did he object to that figure?

A. I do not recollect his comments on it.

(Testimony of L. Hicks Taylor.)

Q. Did you make any adjustment at the end of May 31st when you had a profit of $83,000? [3976]

A. No, there is no adjustment displayed here.

Q. What is the next paper you prepared, please? Is this a trial balance for Issaquah Creamery prepared by you for June 30, 1949? A. Yes.

Q. Did you prepare this in the same manner as the others? A. Yes.

Q. And discuss it with Mr. Forster?

A. Yes.

Q. And what is the net profit figure for the year? A. $113,585.75.

Q. $113,000; did Mr. Forster object to that profit figure? A. Not that I recollect.

Q. Did you make any adjustments to the profit at the end of June, 1949?

A. No, no change made.

Q. And the next paper, is that the trial balance sheet for Issaquah Creamery prepared by you for the month ending July 31, 1949?

A. It is.

Q. And was this prepared and discussed in the same manner? [3977] A. Yes.

Q. What is the net profit figure?

A. $134,538.02.

Q. That is for the year 1949 up to and including July 31st? A. Seven months, yes.

Q. Did Mr. Forster object to this figure?

A. I do not remember.

Q. And were any adjustments made?

A. No.

(Testimony of L. Hicks Taylor.)

Q. And in August, is that the trial balance for the Issaquah Creamery prepared for August 31, 1949? A. Yes.

Q. And was this handled in the same manner?

A. It shows $136,243.57.

Q. Did Mr. Forster object? A. No.

Q. And the next time, September?

A. It shows $142,000 and no changes.

Q. Did Mr. Forster object to that one?

A. No, I don't recollect he did.

Q. And no adjustments; and finally, October?

A. October, it shows a net profit of $131,087.16 and a loss for the month of $11,000.

Q. Was there objection to that? [3978]

A. I do not remember of it.

Q. And November, do you recall what that showed? A. No, I do not.

Q. Handing you Exhibit 159—259-A, rather, the work sheet for November, what is the figure?

A. The figure shows $121,133.54, a loss of ninety-nine hundred dollars.

Q. So that then you had, at the first of December, a figure of $131,000? A. No.

Q. Or one hundred twenty-one thousand?

A. One hundred twenty-one thousand.

Q. And your recollection is what then at the end of December?

Mr. Keesling: Objected to. Recollection of what?

Q. (By Mr. Obenour continuing): Recollection of the net profit figure for December 31, 1949?

Mr. Cox: Before or after adjustment?

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour continuing): Before adjustment. A. $101,000.

Q. How did you believe that you could have computed the figures throughout the entire year of [3979] increasing net profits month by month and still have a sixty-one thousand dollar error?

Mr. LeSourd: Objected to, your Honor, the form of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Would you explain, if you would, please, what your understanding was of the error of your calculations of the increasing net worth through the entire year?

Mr. LeSourd: I object to the form of the question, assuming there was an error.

Mr. Obenour: The error, if the Court please, was the explanation of why they made the adjustment.

Mr. LeSourd: Maybe I am confused about the question. Could we have it read back?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. LeSourd: I renew my objection.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Mr. Forster told you that your figures were in error?

A. He did, yes.

Q. And you made a $61,000 adjustment? [3980]

A. I was given the figures to make the adjustment.

(Testimony of L. Hicks Taylor.)

Q. You adjusted your work sheet $61,000?

A. That is correct, $51,000.

Q. $51,000; you were given a $51,000 and a $10,000 figure?

A. Yes, but $51,000 was the change.

Q. Would you explain what your understanding was as to why you should adjust your figures $51,000?

A. By accounts payable that had not been entered.

Mr. LeSourd: I will object to this as all repetitious.

The Court: Objection sustained. I think we have gone over it several times.

Mr. Obenour: May we recess then, your Honor?

The Court: Have you nothing further?

Mr. Obenour: Yes, but it is only three minutes.

The Court: You prefer to recess now?

Mr. Obenour: Yes.

The Court: Ladies and Gentlemen of the Jury: We will recess until this afternoon at 1:45. The Court calls your attention to the admonition given you on similar occasions, and asks that you heed the admonition on this occasion. You may now be excused.

(Whereupon, the Jury retired from the courtroom.)

The Court: You may step down, Mr. Taylor.

The Witness: Thank you.

The Court: Court will recess until 1:45.

(Whereupon, at 12:13 o'clock p.m. a recess

(Testimony of L. Hicks Taylor.)

was had in the within-entitled and numbered cause until 1:45 o'clock p.m. April 15, 1954, at which time, counsel and defendants heretofore noted, being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Obenour.

Mr. Obenour: We have no further questions, if the Court please.

The Court: Mr. Griffin?

Cross Examination

Q. (By Mr. Griffin): Mr. Taylor, is it an entire summary of your testimony on direct and cross-examination to say that you at no time—that you were the accountant, performing the services that you did for Mr. Forster and his various enterprises—that you at no time consciously [3982] assisted in any evasion of income taxes on the part of Mr. Forster or any of his companies; is that a fair statement?

A. That is a fair statement, yes.

Q. And is it a fact that you did not?

A. Do I——

(Testimony of L. Hicks Taylor.)

Q. (Interposing): I say, it is a fair statement, and a fair statement of fact, that you did not consciously assist in any wise, in the evasion of income, if there was evasion?

A. To the best of my ability, I tried to make correct tax returns.

Q. Now, last evening when we closed, and this morning, again,—that is why I am referring to it—was the matter of the Morris, Daisy Ice Cream, transaction, terminating in the purchase by Mr. Morris of a piece of real estate from Mr. Forster. Do you have that in mind, your testimony in that regard?

Mr. LeSourd: Just a moment, your Honor, may we have the same objection to Mr. Griffin's questions on this subject as to Mr. Obenour's?

The Court: As far as the Court is concerned, it is agreeable. Any objection?

Mr. Griffin: No objection.

Q. (By Mr. Griffin continuing): You have your testimony in [3983] mind in that particular as of this morning and last evening, do you, Mr. Taylor?

A. Yes.

Q. And, as I understood your testimony, the purchase price of the property by Morris and the sale by Mr. Forster was $14,500?

A. I so testified.

Q. And, therefore, there was no one thousand dollars involved, as the Government attorneys tried to show that was not shown on the income tax return?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Objected to, your Honor, as an improper summary of the testimony. There was one thousand dollars involved, which he testified as not the purchase price of this property.

Mr. Griffin: I think that is my very summary of that question. I said not as the Government attempted to show.

Mr. LeSourd: That doesn't make it clear.

Mr. Griffin: I will endeavor to make it clear, if the Court please.

Q. (By Mr. Griffin continuing): The sale price was $14,500, and the sale price of $14,500 was used by you in your computation of the income tax return as the difference between a purchase price of ten thousand dollars and [3984] a sales price of $14,500; that is a fair statement, isn't it?

A. I so testified to that.

Q. And Mr. Forster knew of no purchase price outside of $14,500 as far as you know, did he, from Mr. Morris?

A. My testimony was that Mr. Forster, Mr. Morris and Mr. Taylor all understood it as $14,500.

Q. Yes, sir; and you referred two or three times to $14,500 being the contract price. Actually, the property was sold for cash, was it not?

A. I do not know.

Q. Didn't you handle the entire transaction of that sale? A. In Morris' sale?

Q. No, Mr. Forster's sale. I am referring to some real property.

(Testimony of L. Hicks Taylor.)

A. The transfer of the title of the property to Mr. Morris, yes.

Q. And you prepared the deed of sale for that property, didn't you?

A. It is possible. I am not—from memory, I am not sure but I believe it is possible.

Mr. Griffin: Is the next exhibit A-80?

The Clerk: You want Exhibit A-80? [3985]

Mr. Griffin: No; is the next exhibit A-80?

The Clerk: I will check it.

Mr. Patten: Yes, sir.

Mr. Griffin: Thank you.

The Clerk: Yes, A-80.

Q. (By Mr. Griffin): And Mr. Morris actually paid to you for Mr. Forster the cash that was paid for the property, didn't he?

A. Paid the cash?

Q. Yes, there was a difference in cash in the sale of the Morris property, of the Forster property to Mr. Morris; there was a cash payment made by Mr. Morris in a certain amount, wasn't there?

A. It wasn't made——

Q. (Interposing): To make up $14,500?

A. It wasn't made to me. I never handled that part of it at all.

Q. You never handled any of the cash on it?

A. Not to my recollection.

Mr. Griffin: Will you mark this?

The Clerk: Defendants' Exhibit A-80 marked for identification.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-80 marked for identification. [3986]

Q. (By Mr. Griffin): Handing you Exhibit A-80 for identification, I will ask you what that is, Mr. Taylor?

A. This is a letter to me.

Q. From whom? A. Mr. Morris.

Q. What date?

A. Dated January 24, 1946.

Q. I note some writing in pencil as opposed to pen; do you know whose writing that is?

A. That is my writing.

Mr. LeSourd: If your Honor please, we have simply the same objection to this as our standing objection.

The Court: On improper——

Mr. LeSourd (Interposing): Improper cross-examination.

The Court: No objection apart from that?

Mr. LeSourd: No objection apart from that.

The Court: That general objection may show and the Court would overrule it.

Mr. Moriarty: No objection.

Mr. Obenour: No objection.

The Court: A-80 may be admitted.

Mr. Keesling, any objection? [3987]

Mr. Keesling: No objection.

The Court: A-80 may be admitted.

(Defendants' Exhibit No. A-80 admitted in evidence.)

Mr. Griffin: May I read? Before I do that:

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Griffin): Do you recall that you assisted in getting $500 more for that property than the original Morris offer of $14,000?

A. Very well.

Q. Mr. Morris was in a spot in his business setup and had to have the property, didn't he? That is, he thought he did?

A. I haven't any recollection except as mentioned in that letter, I believe.

Mr. Griffin: May I read A-80?

"Hotel Vancouver, Vancouver, B.C., January 24, 1946.

"Dear Mr. Taylor:

"I tried several times to call you before leaving Seattle but failed to connect.

"It is very important that we complete that deal at an early date, as we are being pushed off from the property where we are now at, so therefore, I am asking that you have [3988] the deed complete as I shall call at your office between 3:00 and 4:00 p.m. Monday, the 28th, and I shall have the cash to take care of the balance.

"Please do not fail me.

"Very respectfully, Frank L. Morris."

Q. (By Mr. Griffin): And you have identified the pencil writing on there, "Quite a traveler"?

A. That is correct.

Q. Does that refresh your recollection that Mr. Morris brought the cash to your office, and received the deed from you?

A. My recollection is that Mr. Forster and Mr.

(Testimony of L. Hicks Taylor.)

Morris were both there. The deed was probably prepared maybe before, if I had the description of the property. Mr. Morris turned the cash over to Mr. Forster, and not to me.

Q. How much was that cash?

A. I don't know whether it was cash or a check. I have no remembrance of it.

Q. But the sale price, of course, was $14,500 as you testified?

A. That is correct, $14,500.

Mr. Griffin: Will you mark this for identification, [3989] please?

The Clerk: Defendants' Exhibit A-81 marked for identification.

(Defendants' Exhibit A-81 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-81 for identification, I will ask you if that is your signature?

A. That is my signature, yes.

Mr. LeSourd: Are you offering this?

Mr. Griffin: Yes.

Mr. LeSourd: We make the same objection to this, your Honor.

Mr. Moriarty: No objection.

The Court: The general objection then may show as being beyond the scope of cross. Is there any other objection?

Mr. LeSourd: Just a moment.

(Whereupon, there was a brief pause.)

Mr. LeSourd: That is the only objection.

(Testimony of L. Hicks Taylor.)

The Court: That general objection may show. The Court will overrule it. There being no other objection, A-81 may be admitted.

(Defendants' Exhibit No. A-81 admitted in evidence.) [3990]

Mr. Griffin: May I read it, if the Court please?

The Court: You may.

Mr. Griffin:

"Seattle, Washington, December 18, 1945.

Receipt is hereby acknowledged of $500 (five hundred dollars) to apply on the purchase of one certain half block located on Second Avenue North between Mercer and Roy Streets in the City of Seattle, known as Lots blank Block blank, Mercer's Addition to the City of Seattle, for a price of ($15,500) Fifteen Thousand Five Hundred Dollars. Delivery of deed and Title Insurance to be made as of January 10, 1946."

Signed, "Frank L. Morris, Purchaser."

"Hans Forster, Seller."

The signature of "L. Hicks Taylor, for Seller."

Q. (By Mr. Griffin): Mr. Taylor, what did you do with that extra one thousand dollars?

A. That extra one thousand dollars was applied against the contract Mr. Forster had with Daisy Ice [3991] Cream purchase.

Q. What was the sale price of this property?

A. $14,500.

Q. The property that you—you prepared this receipt, didn't you?

A. Yes, but though there should be other papers

(Testimony of L. Hicks Taylor.)

that join that. Have you been able to find them in my working papers?

Q. What other papers are there, Mr. Taylor——

A. (Interposing) There should be other——

Q. (Continuing) ——that will show, any paper or document that you have that contradicts the receipt of the sales price of that property at $15,500?

A. There was adjoining papers to attach to that and were with it at some time, in my—among my working papers.

Q. Attached to that, Mr. Taylor, was Exhibit 80. Have you any other document in mind?

A. No, I don't, right offhand, but there was an explanation of that in some way, I think.

Mr. Griffin: All right, the third paper. Will you mark this for identification, please?

The Clerk: Defendants' Exhibit A-82 marked for identification. [3992]

* * * * *

Direct Examination

Q. (By Mr. LeSourd): Mr. Taylor, at the time you went to McNeil Island, what did you do, if anything, with your files of correspondence, working papers and other documents related to Mr. Forster's enterprises?

A. I assembled them very carefully by years, and arranged the ledger and work papers, so that without any great effort, any accountant or Internal Revenue man could have gone to those files and if he had of gone into them carefully, could have

(Testimony of L. Hicks Taylor.)

picked out the work papers that applies to the ledger, and the copies of the income taxes, and could have made a definite audit of the records there.

Q. Now, included—when you say—you say you assembled those. How did you put them in?

A. I put them in cardboard cartons in consecutive order, and they were labelled so that they could find the things if they would go into them with any intelligent idea of obtaining proper information.

Q. Did these boxes contain anything other than your working papers?

A. They contained papers of different types that I had of Mr. Forster's, and my papers that were assembled together, and those were in separate jackets of their own.

Q. And what type of papers were these other papers that you speak of?

A. Letters, agreements that happened to have been in my possession and various papers of all types.

Q. When you say "letters," would you state whether or not that includes correspondence to you?

A. Yes, correspondence to me.

Q. Would you state whether or not that includes your copies of outgoing correspondence?

A. Yes, it would include some of my copies of outgoing correspondence, too.

Q. When you say "agreements," and other matters, would you state whether or not that would include your copies of the various agreements that have been drafted or worked on by you?

(Testimony of L. Hicks Taylor.)

A. Yes, it would contain those, also.

Q. Would you state what the fact is as to whether or not these boxes contained all of your correspondence and other documents relating to Mr. Forster's enterprises? [4008]

A. They included everything that I had. I carefully went through them, and anything pertaining to Mr. Forster or his enterprises were placed in these boxes, so that they would be at their disposal, and I might add this, that when I turned those boxes over, I spoke to Mr. Forster, and stated that if anybody wants to examine them, you had better get in touch with me and give me a chance to explain the boxes, or possibly I could be present and help them get into them.

Q. Was anything—when was this, and to whom did you say this?

A. At the time that I delivered the boxes to Issaquah Creamery Company's office. I told Mr. Forster, and I also mentioned it a little to Mr. Erickson. I don't know whether I did as conclusively to Mr. Erickson as I did to Mr. Forster.

Q. Was anything said with regard to what would happen to these boxes when you got out of McNeil?

A. I told him that the reason I was including it all was that we could pick them up when I returned, and go on with the work.

Q. Now, handing you Defendants' Exhibits A-80 and A-81 and A-82, can you tell us whether or not those were included in your files that were so boxed and delivered?

(Testimony of L. Hicks Taylor.)

A. It is my recollection that they were. [4009]

Q. Were any of these files ever delivered back to you? A. They were not.

Q. Have you had occasion to examine any documents from those files at any place since you got back from McNeil?

A. On our trip to Tacoma on April 25th, with Mr. Kachlein, the audit of the books by Mr. Marx was discussed. I asked Mr. Kachlein if Mr. Marx would not wait until my return before the audit, and he informed me that Mr. Marx would not work with me, and I said, "If possible, it would be well if I could," and he said, "Mr. Marx won't work with you."

Q. Well, now, Mr. Taylor, my question was whether you at any time since coming back from McNeil have seen any documents other than being introduced here in court, taken from these boxes that you left at Issaquah?

A. I probably have when I went before the Internal Revenue to have a hearing with them when I made a statement.

Q. In other words, you have seen certain documents in the possession of the Government?

A. I have seen those documents.

My other files have not been available to me at any time. [4010]

Mr. LeSourd: Just a moment.

(Whereupon, there was a brief pause.)

Mr. LeSourd: That is all, Mr. Taylor.

I would like to put Mr. Cox on the stand.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Are we bound by his answers?

Mr. LeSourd: Excuse me.

The Court: I take it it is primarily between the two defendants.

Mr. Patten: I would like to ask two questions.

The Court: All right.

Cross Examination

Q. (By Mr. Patten): When you delivered these documents to the Issaquah Creamery Company, Mr. Taylor, you intended them for use of the Government agents, didn't you?

A. I felt in delivering the documents there if audits came into being—they were not in being then when I delivered the documents. Mr. Marx had not called. My thought was to follow the procedure that former agents have had, and I arranged the documents so that if a man picked up the 1945 ledger, here was everything pertaining to 1945 following it. I arranged them that way very carefully, and spent considerable time doing it.

Q. Yes, sir; but your purpose was to make them available to the Government agents who might want to inspect the books?

A. That is correct, because I didn't know what my position would be, after going to McNeil, whether I would be free to come and assist, or what would be the picture.

Mr. Patten: That is all.

(Testimony of L. Hicks Taylor.)

Cross Examination

Q. (By Mr. Griffin): At the time you went to McNeill Island, you had a business office here in Seattle, Mr. Taylor? A. I did.

Q. And that office continued during the time that you were under sentence at McNeil Island?

A. That is correct.

Q. And was open to you when you came back?

A. Yes.

Q. And also maintained your home here in Seattle during all that period of time?

A. Yes, sir.

Q. So what you did was to gather all of the books, records and documents, income tax returns, other tax returns, every paper and document that you could find that dealt with Hans Forster or his enterprises and placed [4012] them in boxes, and took them out to the Issaquah Creamery Company before you left for McNeil, isn't that correct?

A. Because of my great confidence in Mr. Forster, our close friendship, as I thought, and a genuineness of Mr. Forster, I felt that I could trust and place those files in his office, and not be subject to what I have been put through at the present time.

Q. You were not endeavoring to conceal anything, were you?

A. There was nothing concealed. You have every scrap of paper, and you have been playing with it here for four years.

Q. And the purpose of placing it there was for the use, as you now testify, of the Government

(Testimony of L. Hicks Taylor.)

agents and also for the use of any accountant that Mr. Forster might employ, weren't they?

A. That was not the thought. The great portion of those papers were my personal working papers that Mr. Forster had no authority to have.

Q. I think you testified before today that the working papers were part of the ledger and you sat on the witness chair, did you not, asking for the working papers so that you could explain the ledger?

A. That is correct, from an explanatory standpoint [4013]

Q. So the reason that you took the working papers out was because they were necessary for anyone to understand your ledger, weren't they?

A. That is true for the year-end closing sheets but none of the rest of the working papers were any of Mr. Forster's authority, they were my personal working papers.

Q. Did Mr. Forster ask you to bring out your working papers?

A. He did not ask me to. I did it as a matter of being just to Mr. Forster, under the conditions.

Q. That is, you voluntarily left all of these documents that are in question at the Issaquah Creamery before you went to McNeil Island?

A. I wouldn't say voluntarily. I placed them there for the convenience and possible aid and help to Mr. Forster if investigations of any kind came up, if I could not assist.

Q. Did you take them out yourself?

(Testimony of L. Hicks Taylor.)

A. I took them out in my car, and put them in the place assigned me by Mr. Erickson to place these files.

Q. In case of an investigation by either the Government or other auditors, did you consider these papers necessary to a full understanding of your work? [4014]

A. At any time an audit was made in my office, I always produced all those papers and assisted in every way that I could to aid those making an audit, and I never had any trouble at all, didn't have a lot of grief checking those papers. They wouldn't have had in this case, if I had been present.

Mr. Griffin: Your Honor, may I have the question read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. They would assist, yes.

Mr. Griffin: That is all.

The Court: Mr. Keesling, any questions?

Mr. Keesling: No.

(Witness excused.)

Mr. LeSourd: All right, I will call Mr. Cox at this time.

The Court: I might say in regard to the testimony of Counsel, that if it relates to the question of having an opportunity to inspect the Court, of

course, would grant full opportunity for full inspection, but if this has to do with anything further——

Mr. LeSourd: (Interposing) That would be on that matter.

The Court: I think the only question involved there, [4015] Mr. LeSourd, is whether or not you have had a full opportunity to inspect. Is that not right?

Mr. LeSourd: Well, whether the documents were presented to us for inspection.

The Court: I see.

Mr. LeSourd: We had an opportunity to inspect certain documents presented to us, but the issue is whether they were presented to us for inspection.

The Court: If I may inquire, assuming that they were not, and that you didn't see them, or assuming that they were and that they were otherwise admissible, is there anything you couldn't ask for now and have whatever time you need on inspection of the documents?

Mr. LeSourd: That would be a problem, of course, your Honor. We think in addition it all goes to the fundamental situation here as to privilege.

The Court: If you feel it is essential for your record that is satisfactory. I just wanted to advise you what I would do under the circumstances, but if you feel it should be in the record, I would follow your judgment, and I wouldn't be inclined to prevent Mr. Cox arguing the case before the Jury if he should desire.

Mr. Cox: It is in the absence of the jury.

The Court: Yes, it is in the absence of the jury.

Mr. LeSourd: I would like to make the [4016] record on this, if your Honor please. [4017]

KENNETH COX

upon being called as a witness for and on behalf of the Defendant Taylor, and upon being first duly sworn, testified as follows:

Direct Examination

Mr. LeSourd: Before commencing, may I, on this latter point, this not being before the jury, I take it it would not prevent Mr. Cox from continuing as counsel in the case. If there is any question about that,——

The Court: (Interposing) Question might be raised. I would not on my own be inclined to take any action. I don't know if counsel would want to be heard or not.

Mr. LeSourd: It is not anticipated he will make final argument to the jury, but he may participate in the case otherwise.

The Court: Do Counsel feel, for any reason, it would disqualify him?

Mr. Moriarty: I don't think so, your Honor. We would not make any objection.

The Court: Mr. Griffin?

(Whereupon, there was a brief pause.)

Mr. Griffin: I would rather not be called upon at this point. We have had to remove one counsel

(Testimony of Kenneth Cox.)

from this case, and I am not very generous right at the present [4018] moment.

The Court: I think it is a matter for the Court to determine, and I won't—unless—of course, Counsel can make the objection. I will advise you I wouldn't be inclined to request that he desist in participation.

Mr. LeSourd: If there is any question about it, and in view of your Honor's own feeling about the testimony, I will not offer Mr. Cox as a witness.

Mr. Moriarty: For the record, Mr. LeSourd, there is no claim that the Government has not made records available at all times?

Mr. LeSourd: No. I make no such claim.

Mr. Moriarty: The record may so show.

Mr. Patten: I would like the record to show that.

Mr. LeSourd: And I would like to call Mr. Kachlein.

(Whereupon, Mr. Cox withdrew from the witness chair.) [4019]

* * * * *

The Court: I might state, Gentlemen, I don't believe that on the showing made that the Court would sustain the objection or would strike the documents. I believe they are admissible, and, of course, you have your general objection as to being beyond the scope of cross-examination.

Now, as to time, of course, to inspect further.

Mr. LeSourd: I didn't hear that.

The Court: As to time to inspect or have access, that is another question.

Mr. LeSourd: I would like to have them produce everything they have in their possession so that we can examine all those documents and that [4039] they be made available to us. We don't ask that the trial be adjourned in any way.

Mr. Griffin: If the Court please, perhaps this record had better show the number of times that all these documents were offered to counsel for inspection. I have prepared my cross-examination trying to save time here with documents in line with my cross-examination and I do not propose, unless directed by this Court, to interrupt my cross-examination by delivering documents, impeaching or otherwise, as this one has been, to Counsel.

The Court: I do not anticipate it will interrupt your cross-examination.

Mr. LeSourd: No, but certainly, your Honor, we should have the right to examine the documents.

The Court: You should have the right to examine the documents before you go on with redirect.

Mr. Cox: We should have the right to examine them today.

Mr. LeSourd: Yes, immediately when we suspend.

Mr. Griffin: I do not propose, unless the Court directs, to have this witness prepared.

The Court: A document used for impeachment——

Mr. Cox: (Interposing) You mean we can look at [4040] the others that are discarded?

The Court: What was that?

Mr. Cox: You mean we can look at the other ones now left in the files?

Mr. Griffin: Certainly, no objection to that at all.

Mr. LeSourd: If these are documents from Mr. Taylor's files left out there, it certainly seems to me we have the right to see all of them at any time. And if we have that right——

The Court: (Interposing) You mean impeaching documents?

Mr. LeSourd: Yes, if it was a part of Mr. Taylor's personal files that he was entitled—that we have been entitled to see all this time we certainly have the right to have that shown to us.

The Court: I understand, Mr. LeSourd, that you might be interested in looking for other documents in accordance with Mr. Taylor's statements that there were other documents in the file that might serve to explain.

Mr. LeSourd: That would be one thing.

The Court: I didn't anticipate at any time that an impeaching document might be disclosed before it is used.

Mr. LeSourd: If it is not to be disclosed, [4041] we are in a position where the other defendant has secured personal files of this defendant and without disclosing them, and can go ahead and use them in this trial and I think that would be highly improper and unconscionable.

The Court: I frankly don't see that. What you are asking is that you see everything they have.

Mr. Le Sourd: Everything they have that was taken——

The Court: (Interposing) That they propose to use or otherwise?

Mr. LeSourd: Everything they have that was taken from Mr. Taylor's personal files.

The Court: In advance of use?

Mr. LeSourd: In advance of use, yes, sir.

The Court: Which would include, of course, impeaching documents.

Mr. LeSourd: It might.

The Court: I would say that you have—you should have permission to see documents generally other than impeaching documents, but impeaching documents lose their value, do they not, when they are disclosed?

Mr. LeSourd: I have not thought that one defendant in a case like this could secure possession of personal files of another defendant and hold them and not [4042] disclose them for examination by counsel—by the other defendant or by counsel for the other defendant and use them in a trial in this manner.

The Court: Well, of course, they have been made available.

Mr. LeSourd: That is the question, your Honor. Certainly, when I was over there, they were not available. I went through every—Mr. Cox and I went through every file on the table when I visited Bogle, Bogle and Gates. If there are documents that we are not aware of in Mr. Taylor's personal files, we certainly ought to have the right to use them.

Mr. Griffin: If the Court please, a direct attack

has been made upon Mr. Kachlein, one of the most fantastic defenses I have heard that I am prepared to meet. Now, it is stated that they didn't see certain papers that we are going to use. These gentlemen, I think, three times went through these files. I went through them several times in the jumble they were in and I found something new that I thought might be useful practically every time as regards Mr. Taylor.

Now, if they couldn't use their eyes or realize those things we are going to use, I don't think that should reflect upon the office of associate counsel when they were on the same table that I used, but I will [4043] say that it took me hours of more than one day to go through these files, time and time again.

Mr. Cox: If the Court please, in regard to the statement made by both Mr. Griffin and Mr. Brody, the first occasion when we visited the office of Bogle, Bogle and Gates, Mr. LeSourd and I were present. We were then shown certain documents that were extracted from the contents and asked if we would stipulate as to their admission. As Mr. LeSourd stated, we examined those documents and these were not included, and we asked where the rest of the files were, and we were advised that some were at Mr. Griffin's home, or possibly in his garage, and that some may have been in the office at that time. We asked if we could examine those. They agreed that we could come at a time suitable to both of us. I visited the office that time and spent, I would say, an hour and a half or two hours going through

them. There were a good many of them. I can't claim that I looked at every document in all the cartons, but I did look for certain things we were interested in, and this Daisy Ice Cream was certainly one of them. I visited the office on a second occasion, at which time I had heard some mention of a difference of one thousand dollars, and I was certainly looking for anything I could see at that time that bore on that [4044] issue.

After I completed that investigation, I asked Mr. Brody whether there were any other documents originally in those files that were not now there, and he said there was nothing—and this was subsequent to the commencement of this trial—outside of that which had been there, outside of what was shown to Mr. LeSourd and myself when we were first in his office. That is the extent of the examination made.

I agree with Mr. Griffin that by that time, in January, 1950, nearly four years after they were delivered to Issaquah, they were in a jumble, but that the examination which was made with respect to items for which I had any reason to be looking was sufficient to have disclosed them if they were there, and as to the question specifically raised, this being after commencement of this trial, apparently it is Mr. Brody's contention that this was discovered after that, and removed from the file, otherwise he would not be in a position to examine them, I would say, sometime in February.

Mr. Griffin: Before Mr. Brody answers, you may be interested, your Honor, in why some of these

noted, being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin. [4048]

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination (continued)

Q. (By Mr. Griffin): Mr. Taylor, having receipted, on December 18, 1945, for $500 on the purchase price of this property of $15,500, and the sale price, you say, is $14,500, what became of that extra $1,000 on the purchase price?

A. My recollection of this transaction was that the $1,000 was to apply against the Daisy Ice Cream purchase. The real estate was to be sold for $14,500. That was my remembrance, which is as clear as if it happened yesterday.

Q. I think you said you prepared the deed?

A. I am not positive, but I believe I must have.

Q. And you purchased the revenue stamps for the deed, didn't you?

A. That I rather doubt.

No. 14656

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Court of Appeals
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HANS FORSTER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

(In Six Volumes)

VOLUME V.

(Pages 1869 to 2328, inclusive)

Appeal from the United States District Court for the Western District of Washington, Northern Division

FILED

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(Testimony of L. Hicks Taylor.)

Q. Mr. Taylor——

A. (Interposing) Have you the copy of the deed? Pardon me.

Q. Pardon me. I will ask the questions.

Mr. Taylor, that deed carried $32? By [4049] "that deed," I am referring to the deed from Mr. Forster to Mr. Morris. That deed carried revenue stamps of $32, didn't it? A. I do not know.

Q. Do you know the state tax per thousand conveyance upon a deed?

A. Not at the present time, I do not know.

Q. You handled all tax matters for Mr. Forster and all these corporations?

A. I have services, I could look it up. I haven't it in memory.

Q. Do you recall what the State Stamp Tax per thousand on conveyance of real estate was in 1946?

A. No, I do not remember.

Q. Would you say it was not $1 a thousand?

A. I do not remember.

Q. What was the Federal Excise?

A. I do not remember.

Q. Would you say it was not $1.10?

A. I do not know.

Mr. LeSourd: Objected to as argumentative, your Honor.

Q. (By Mr. Griffin continuing): Now, with Exhibit A-81, being your receipt for the $500 upon a sale price of $15,500, [4050] have you any other explanation than that you made this morning as to how you handled that transaction upon the books?

(Testimony of L. Hicks Taylor.)

A. The sale price upon the books was $14,500.

Q. Yes, and that is the same sales price that you carried into Mr. Forster's income tax return?

A. That is correct.

Q. And there was an additional $1,000 of income in which you prepared the receipt, Exhibit A-81, that you didn't return as Mr. Forster's income, wasn't there?

A. The record shows that I did not return it, but I did not consider it an income to Mr. Forster, because it applied on a contract for the purchase of equipment that was not being sold.

Q. Mr. Taylor, any amount of money received by Mr. Forster for something that he sold became a part of gross income, didn't it?

A. That situation reverts itself into a barter in property, not in cash. Mr. Forster was reporting on a cash basis.

Q. Yes, and reporting on a cash basis, Mr. Forster must report every five-cent piece that he received, doesn't he?

A. He didn't receive every five-cent piece for that full amount of money. Mr. Forster received a [4051] credit against equipment purchased that was not sold, and there was no profit or loss application upon it.

Q. Was this the same equipment that you handled down at Simonson and Forster the same way?

Mr. LeSourd: Objected to.

Q. (By Mr. Griffin continuing): Amending that question:

(Testimony of L. Hicks Taylor.)

The same equipment—was it the same equipment you handled at Simonson and Forster?

A. It had no connection.

Q. No connection; you are a licensed public accountant, Mr. Taylor? A. I was.

Q. By that, you mean your license has been suspended?

A. I returned my license to the Board.

Q. After conviction? A. Before.

Q. What is a licensed public accountant?

A. Would you like me to explain the law?

Q. No, I just want you to tell the jury what is a licensed public accountant? Is there a distinction between a licensed public accountant and a certified public accountant?

A. Very much of a distinction, yes. [4052]

Q. When you say that you returned your license to the Board, you are referring to the Board—State Board set up by the State of Washington governing licensed public accountants and certified public accountants, aren't you?

A. It is my memory that in either 1948 or 1949 a law was passed by the Legislature combining the certified public accountants and licensed public accountants and public accountants into one law.

Licensed public accountants, then, in essence, have been men who were in the public accounting business and had maintained an office and operated in the City for a period of five years or longer. They were actually practising public accountants.

Q. Now, what is the difference between a li-

(Testimony of L. Hicks Taylor.)

censed public accountant and a certified public accountant?

A. A certified public accountant takes an examination on the theory of accounting. A licensed public accountant obtains his license through having had experience.

Q. And when did you obtain—when did you first become a licensed public accountant?

A. In April, I believe, of 1934.

Q. And you also had a card to practice before the Internal Revenue Bureau, didn't you? [4053]

A. Yes, I did.

Q. And by that, only lawyers and only accountants that hold this special card issued by the Department may practice before that department; that is true, isn't it?

A. That is according to Code 230.

Q. Yes, and you did practice before the Internal Revenue Department, did you not?

A. In a small degree, according to the type of my business, yes.

Q. And you were the president for two terms, was it, of the State Organization of Licensed Public Accountants? A. That is true.

Q. In—if I understand you correctly, you testified that, referring to you and your firm as L. Hicks Taylor and Company, that "We do not make audits"? Is that correct?

A. That is not our practice to make audits.

Q. And in answer, many times, to questions on

(Testimony of L. Hicks Taylor.)

cross-examination, you said "I did not audit the books"; is that correct?

A. That is correct, yes.

Q. You represented to Mr. Forster that you were an auditor, didn't you? [4054]

A. Mr. Forster knew at all times I was not auditing his books.

Mr. Griffin: May I have the question read, please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) I don't believe that I ever did.

Q. (By Mr. Griffin): You represented to the public of the State of Washington, that you were an auditor, didn't you?

Mr. LeSourd: I object to this line of questioning. Is he using the word "auditor" as meaning an accountant, or as meaning he made an audit? It is ambiguous and improper, your Honor.

The Court: Objection overruled.

The Witness: Would you read the question, please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. I represented that I could perform an audit, yes. [4055]

Q. (By Mr. Griffin): That you could perform audits? A. Yes.

Q. You did audit for Mr. Forster, didn't you?

(Testimony of L. Hicks Taylor.)

A. I did not.

Mr. Griffin: Will you mark this letter for identification, please?

The Clerk: Defendants' Exhibit No. A-83 marked for identification.

(Defendants' Exhibit No. A-83 marked for identification.)

Q. (By Mr. Griffin): Mr. Taylor, you handled the negotiations for Mr. Forster in the contemplated purchase of the Selah Home Dairy, did you not?

Mr. LeSourd: Objected to, your Honor, as improper cross-examination and irrelevant and immaterial.

The Court: Is that part of the——

Mr. Griffin: (Interposing) This is preliminary although it would be material upon his testimony that he was not a financial adviser.

The Court: If it is a preliminary matter, the Court will overrule objection.

A. Yes, I went to Selah with Mr. Forster to look [4056] at a dairy.

Q. (By Mr. Griffin): Handing you Exhibit A-83, Mr. Taylor, I will ask you what that is.

A. "Mr. Forster——."

Q. Just what is it, Mr. Taylor?

Mr. LeSourd: Just a moment. Identify the document.

A. This is a letter that I wrote to the Selah Home Dairy.

Q. (By Mr. Griffin): On your letterhead?

A. On my letterhead, yes.

Mr. LeSourd: We object to it, your Honor, as improper cross-examination and irrelevant and immaterial, and back in the period of 1939 and has nothing to do with this case in any respect.

The Court: May I see the document?

(Whereupon, document was handed to the Court.)

The Court: I am inclined to sustain objection, Mr. Griffin.

Mr. Griffin: Did you look at the letterhead?

The Court: Yes, but I—I will hear from you later on it, if you wish.

Mr. Griffin: I would like to be heard [4057]

The Court: Now?

Mr. Griffin: I would like to be heard now.

Mr. LeSourd: Let me say, your Honor, if the purpose of this is to show that L. Hicks Taylor and Company had letters describing themselves as accountants and auditors, I certainly will stipulate to that. It has no——

Mr. Griffin: (Interposing) Excuse me.

Mr. LeSourd: Yes.

Mr. Griffin: It is not a matter of stipulation. The purpose of the letter is for the letterhead. I can't conceive of anything more material than this letterhead under the witness's testimony.

Mr. LeSourd: I fail to see the materiality of it. He said already in his testimony several times that his firm made audits, not very many, but on occasion, and if counsel wants to establish that their letterhead described them as accountants and auditors, I will stipulate.

Mr. Griffin: I will accept the stipulation as the letterhead December 26, 1939—may I read the letterhead?

Mr. LeSourd: Yes.

Mr. Griffin: "L. Hicks Taylor and Company, Accountants and Auditors, Textile Tower, Main 0799, Seattle, [4058] Business Analysis, Audits, Systems, Income Tax Service." See: "L. Hicks Taylor, William P. Berry, Licensed Public Accountants, Ralph E. Doremus."

I accept the stipulation.

The Court: Do you offer A-82, Mr. Griffin?

Mr. Griffin: That is the one I am offering.

The Court: No, this is 83.

Mr. Griffin: Pardon me. Yes, I offer it.

Mr. Moriarty: The carbon copy?

Mr. Griffin: Yes, of A-80.

The Court: Yes. The same objection will show, I assume, Mr. LeSourd, and the Court will overrule that and admit A-82.

Mr. LeSourd: Yes.

(Defendants' Exhibit No. A-82 admitted in evidence.)

The Court: And the Court sustains objection to A-83.

The Clerk: I didn't hear the *Clerk's* ruling to A-82.

The Court: A-82 is admitted.

Mr. Griffin: Will you mark this document?

The Clerk: Defendants' Exhibit A-84 marked for identification.

(Defendants' Exhibit No. A-84 marked for identification.) [4059]

Mr. Griffin: I offer in evidence a certified copy of the Excise Tax Return of Hans Forster, doing business as Alpine Dairy to the State of Washington for the months of May and June, 1947.

The Court: That is a State of Washington Tax Return?

Mr. Griffin: Yes.

Mr. Moriarty: We have no objection to the exhibit, but do not regard it as proper cross-examination, if the Court please.

Mr. LeSourd: If the Court please, we have no objection as to identity in the first place. We don't know what the relevancy or materiality is. It doesn't appear here, and we will object on that ground, and on the ground of improper cross-examination.

If it is desired—if it is Counsel's purpose of introducing all this simply to show that Mr. Taylor describes himself as auditor, we will so stipulate. He testified in his direct examination that he often times used the word "auditor" interchangeably with "accountant."

If that is the purpose of the exhibit, we will stipulate.

Mr. Griffin: I am not asking for a stipulation.

The purpose of them is it is a return made for Hans Forster under his own signature and his own description [4060] of himself on the second page.

Mr. LeSourd: We will object to the document as improper cross.

Mr. Griffin: He testified he did not audit for and never audited for Hans Forster.

Mr. LeSourd: I will ask that remark to be stricken, your Honor. It is not a correct statement of his testimony.

The Court: Well, Counsel's comment I will not strike, but I will suggest to the jury that they disregard them, however, because they are not evidence and not to be considered as evidence.

I will sustain the objection, Mr. Griffin.

Mr. Griffin: If the Court please, may we adjourn right now, then?

The Court: All right.

Ladies and Gentlemen of the Jury, we will recess now, so that the Court can hear argument.

We are going only half a day tomorrow, so that we will start at 9:30 and recess at a quarter to 12:00. So, the Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion, and then we will recess until 9:30 so that if you will be here a little in advance, we will adjourn at a quarter to 12:00.

(Whereupon, the Jury retired from the court room.)

The Court: It is stipulated the Jury have left the court room?

Mr. Griffin: Yes.

Mr. Moriarty: Yes, your Honor.

The Court: All right, Mr. Griffin.

Mr. Griffin: I would assume that I am entitled to meet the testimony of Mr. Taylor and entitled to try and defend on behalf of Mr. Forster.

This witness has testified—his whole claim is—he had nothing to do with the whole books and records, except figures given him; he was never an auditor for Hans Forster or Issaquah Creamery and Mr. Forster had no right to rely on him at all.

I propose to show that he described himself as the auditor of Hans Forster and the Alpine Dairy, of the Issaquah Creamery, and that he advised the State of Washington that he was the Auditor for all tax matters of Mr. Forster and the Issaquah Creamery, and his own letter in that particular—do I have—does Mr. Forster have to sit here and accept this witness's statement and implications from it that he didn't audit his books, and had nothing to do with it except some figures given him by a bookkeeper and [4062] wasn't paid for being an auditor without any answer for anything he did.

I can conceive nothing more material than these returns supported by the audits that he made and his presentation that he was caring for all the auditing of Hans Forster. They don't come in all together; they come in one by one. If that is not the situation, then there is no defense, and we are bound by the witness's testimony, and the Court might as well instruct the verdict releasing Mr. Taylor and convicting Mr. Forster.

The Court: The last, I don't think, follows.

Mr. LeSourd: If your Honor please?

The Court: Mr. LeSourd?

Mr. LeSourd: If the issue here is whether an audit was made of Issaquah Creamery and Alpine Dairy in the years in question, certainly the use of

the term "auditor" in describing himself is no proof that an audit was made, and it is utterly irrelevant and immaterial, because this isn't any showing that any audit was made during the years.

If that is your purpose, Mr. Griffin, I assume that you have some evidence that you are going to try and show it, but this doesn't show it.

Mr. Griffin: It isn't a question of whether an audit is made. As your Honor said time after time, it [4063] is a question of what Mr. Forster believed. Did he believe L. Hicks Taylor was an accountant, sitting in Seattle, or did he believe he was an auditor? Was Taylor making returns to the State of Washington for his businesses believing that he was an auditor?

I may sound warm and I don't mean to be, but this is the first time I have been so surprised as to the materiality of the written documents of the witness himself. The whole matter of this case is, when we are down to it, did Forster have a right to rely on Mr. Taylor? Did he believe that he was being taken care of, or was he engaged in evading his income taxes wilfully? Which one of these men were doing it, or were either one?

The sole question in this case is the intent of these defendants. Did Forster have every right to rely and believe that this man was an auditor in taking care of his books? I don't care whether they call him auditor or accountants. These are documents that go to show that he did, and I propose to start with the early years to show that he made audits, and they were called "audits," and that is

what he sold his bill of goods on back in the '30s. That is why we did not have much conversation in the late '40s. This goes over a long period of time.

The Court: It is your contention that this is a type of document wherein he signs as auditor, and is admissible to establish that fact?

Mr. Griffin: To establish that fact. It goes to the very basis of our case, and to the credibility of the witness. They can't come all together. We are taking them up separately.

Mr. Moriarty: It is the Government's position, if your Honor please, that we made no objection to A-83, which was a document in 1939 regarding Mr. Taylor being a business analyst, auditor and income tax adviser, and it was offered for that purpose, and eventually stipulation was accepted by Mr. Griffin.

Now, A-84 happens to be a certified copy of a document on record in the State Tax Department of an Excise Tax, which is not shown was ever seen by Mr. Forster or upon which he could rely upon, and the addition of any further documents that is proposed on this line under stipulation will do nothing but add confusion to the real point of the case.

Mr. LeSourd: Furthermore, your Honor, the fact that an accountant uses the word "auditor" in describing himself certainly does not in any way mean he is making an audit, nor is there any scintilla of proof that any such audit was made, or that anyone has [4065] a right to rely on the fact that an audit was made, least of all an employer that is paying him.

Mr. Griffin: I wonder if the Court realizes that up to this point in the case, notwithstanding counsel's statement, there hasn't been a single word of testimony about the original employment, or any testimony along that line; while counsel's statement is sound, it is an action for quantum meruit, for money earned. There is nothing in this record, if you look back on it, except Counsel's statement on the matter of employment.

I am giving that warning now so that they can be ready for it. I am not concerned whether he made an audit at all. I am concerned with what he led Hans Forster to believe he was and was doing. I am concerned why this jury should believe that up to the time of Taylor's confession of guilt in his own income tax return—I am interested in this jury having reason to rely upon Mr. Taylor in the caring for his books, and whether he had a right to rely. It goes to intent, and whether he had a right to rely or not.

The Court: You may step down, Mr. Taylor.

(Whereupon, witness withdrew from the witness chair.)

The Court: I say, of course, that anything that would [4066] tend to establish Mr. Forster's reliance upon Mr. Taylor in income tax matters is proper, but the question is: Does this particular document, or any other document, serve to do it?

Mr. Griffin: All right; if Taylor had never in his life had a letterhead that said he was an auditor, and never returned—made returns for Hans Forster and Issaquah Creamery saying that he was an

auditor, and actually never made any audits, that would be one thing.

Hans Forster, how could you rely on this man who never claimed to be an auditor and never audited for you, and never made any returns to the State or Federal Government in the nature of an audit? I believe that would be a very plausible argument to the Jury.

I propose to show that he did the very opposite, and that that is just as material in my case as the other could be material in their case, and the Government's case.

As a matter of fact, that is the representation they made to the Jury in their case. I propose to show just the reverse, by the witness's own testimony.

It affects anything from credibility on [4067] out, but primarily it just goes to the heart of the matter of intent. Who was deceiving whom?

The Court: Well, I take it, Mr. Griffin, you feel it is very important to your case, and I will be happy to give further consideration before making final ruling on it, although, as I have indicated, it appears to me at this time not to be admissible.

Mr. Griffin: I may say that there will be additional ones for the year 1948.

The Court: That is this same type of document?

Mr. Griffin: 1949, for the Issaquah Creamery, 1948, and the additional matter, as far as correspondence is concerned, supporting Mr. Taylor's claim that he was auditor for Hans Forster, Alpine Dairy and the Issaquah Creamery Company. I

think the Jury can infer that if he made those representations to the State of Washington, perhaps Hans Forster was not so false in believing his books were being properly taken care of by an auditor.

The Court: What limitation do you think, Mr. Griffin, there might be on anything of that character? Would it have to be—I take it, to begin with, you feel it is not necessary that the matter be called —or written to Mr. Forster or called to his attention? These particular documents, of course, while they relate to the Alpine Dairy, the signature here, of course, I [4068] assume, didn't come to the attention of Mr. Forster.

Mr. Griffin: That is correct. I wouldn't assume it would, either, because the auditor, L. Hicks Taylor, was handling all these matters that had been turned over by Mr. Forster to his auditor, L. Hicks Taylor.

The Court: You say it goes to the intent. In other words, this whole issue is to establish Mr. Forster's justification in relying entirely upon Mr. Taylor?

Mr. Griffin: Yes, your Honor. We are dealing with specific years, which are the end years of a 25-year relationship of accountant-auditor and client, and it isn't surprising that the Government has not produced, or that there was very much said between these people in the five years at issue, because that situation was built in the 15 years before.

Now, it may have been built, and the Jury can find it was built, under a conspiracy to cheat and

defraud between these two people, or either one of them. I realize the implication when I get through this cross-examination, but I intend to have established—I may suggest to you that I have weighed whether I am not establishing more strongly the Government's case than it has been able to establish itself.

However, I propose to do it so that this [4069] jury may determine this matter of what the intent was in these years, but it is built from what the situation was between these two men in the years the preceded it, and they built that situation, and the fact that Taylor audited for Hans Forster—Forster doesn't know the difference between an audit and a statement, the evidence shows—that is, if the jury believes it but he audited and reconciled the bank accounts when he gained the original employment. From there on, I propose to show, sir, that it was his kind of bookkeeping that snowballed, year by year, into the result that you get in these five years, just as if one of these were snowballed into the other.

I show it from his own books and his own records—that is, Hans Forster's books and records, but kept by Hicks Taylor—and not maintained as he said or as he claimed, just from figures handed to him.

He started out and got the confidence to begin with, and got a job to begin with. As a matter of fact, that was said in the opening statement of opposing counsel as part of this case. You cannot separate these five years that are in question from

a life time of these individuals, as to what occurred in those five years. Confidence was built of the one in the other. That confidence, sir, went past [4070] the confession of guilt of Taylor. It maintained—it was maintained by Forster until it was spread before him by other accountants, that which this man did.

Now, we are dealing with the minds of two men and thoughts and their intent. We can only establish it by these items that raise the question of credibility on the one hand, and the things he did on the other, and the representations that he made. He says he never represented that he was auditing. It was his testimony to begin with.

I have said all I care to now. It is adjourning time.

Mr. LeSourd: May Mr. Cox be excused?

The Court: Yes, you may be excused, Mr. Cox.

(Whereupon, Mr. Cox withdrew from the court room.)

Mr. Moriarty: It is the Government's position, if your Honor please, that regardless of the statements of Mr. Forster, that he reported each cent to Mr. Taylor, the fact that Mr. Taylor held himself out to somebody else is so confusing in the light of the mass of documents here, that I don't see any value other than the stipulation by Mr. LeSourd on behalf of Mr. Taylor. The documents don't add to it.

Mr. Griffin: We didn't put 280 documents in to add confusion. [4071]

Mr. Moriarty: You can put 280 of Excise Tax in alone.

Mr. Griffin: That is right.

The Court: Mr. LeSourd?

Mr. LeSourd: I don't intend to also make a speech summarizing my case, as Mr. Griffin might have in a speech to the Jury, but I want to emphasize that the descriptive term "auditor," which has been used by many witnesses right here on the stand—it is a common expression—we are perfectly willing to stipulate, as Mr. Taylor testified on his direct, that many times that word is used in place of "accountant," and beyond that, there is no relevancy to this thing at all.

If they can prove an audit was made, let them prove an audit was made, but certainly a term like that has no meaning in this case.

The Court: As I stated, I will consider the matter and make a definite and final ruling in the morning. And, remember, we meet at 9:30 tomorrow.

Mr. Moriarty: Did you tell the jury?

The Court: Yes, I told the jury.

Court will recess until 9:30.

(Whereupon, at 4:14 o'clock p.m. April 15, 1954, a recess was had in the within-entitled and numbered cause until 9:30 o'clock a.m. April 16, 1954.) [4072]

* * * * *

The Court: Before we call the Jury, in regard to Exhibit, for identification, A-84, the Court will

adhere to its ruling indicated last night, and sustain the objection.

You may call the Jury.

Mr. Griffin: At this time, the Defendant Forster,——

The Court: (Interposing) (To Bailiff) Just a moment.

Mr. Griffin: (Continuing) At this time, the Defendant Forster is compelled to, and does, move for a mis-trial upon the ground and for the reason that it is now definitely apparent, by the atmosphere that has been created, both by the Government and by the ruling of the Court, that no fair trial can be had. The Government has objected to a document offered in evidence upon the ground that it will clutter the record. The Government, over Counsel's objection for Mr. Forster spent two months introducing some 370 exhibits of thousands of pages. It is now suggested a photostatic copy under the seal of the Secretary of the State of Washington of two pages, which bears the signature of the witness on the stand as an auditor for Mr. Forster and the other Forster enterprises, will clutter the record. [4078]

The Government has stated that. Very well. I am stating the reasons for my motion which will proceed from now on, day to day, and without having to reiterate it at that time.

The Government, on cross-examination of the witness on the stand, so-called cross-examination——

Mr. Moriarty: (Interposing) I didn't hear you.

Mr. Griffin: I say, the Government, in cross-examination of the witness on the stand, one of the defendants, conducted the cross-examination in a manner and with the plain desire to in nowise compromise the witness on the stand, but let him reiterate again his method and claim of defense, the first time in a court room, doubtless since Courts began, that the Government had a witness on the stand, a defendant, taking the stand, convicted of a crime, the same crime that is charged in this case, and did not cross-examine as to that matter, leaving for counsel for Mr. Forster the necessity of, in the face of the Court's rulings in these matters, presenting to the jury a position that the Court says cannot be sustained, and where it has to be done now, because of the error committed, and I say this with all the solemnity that I can, that there is not only error in the ruling of the Court—and I am presuming the additional [4079] rulings as we come along in these matters—it is absolutely prejudicial. It prevents the Defendant Forster from having a fair trial. It cannot be had.

On the other hand, as far as the Defendant Taylor is concerned, while the Court had no control of any kind over the opening statement of counsel for Mr. Taylor as to proof to be offered, it has permitted the widest latitude of collateral matters, it has permitted attack upon one of counsel for Mr. Forster at the very beginning of this trial, and he had to withdraw therefrom. The Court ruled and sustained the right of Mr. Taylor, the Defendant, to substantiate the position taken in the opening

statement. Whether I will be permitted to meet any of that, I don't know. I will reach that as the time comes. However, as I recall, sometime during the trial in the latitude admitted, it was due in part, and I think primarily, to the suggestion that Taylor, having moved for a severance and also claiming that the documents being used were confidential, and the private records of Mr. Taylor, I think your Honor felt that, and so stated the fact that, that was one consideration for your ruling insofar as Taylor was concerned, so that there could be no claim of prejudice.

However, it now develops—three things [4080] developed. Voluntarily, the witness Taylor on the witness stand, testified that these documents, to-wit: his work sheets, are part of the ledgers, or, as he put it, part of the books, and he sat on the witness stand and couldn't explain the books, the ledgers, without his work sheets. They were the property then of Mr. Forster. Beyond that, he has now testified under oath that he voluntarily took all of these documents to the Issaquah Creamery and left them there for the use of such people as might want to use them, the very purpose being used here.

Now, since certain people used them, he was indicted. Now, with that atmosphere created on behalf of Mr. Taylor, who testified for days, and his whole case was based upon an attack upon one of counsel for Mr. Forster, and his whole position being that he was not an auditor and never audited anything, that Mr. Forster had no right to rely upon him, in fact, that he relied upon Forster,

testifying the duty of Mr. Forster that his duty, he, Forster, to Mr. Taylor, was greater than he, Taylor's, duty to Mr. Forster, I am prevented from showing under his own handwriting that he represented himself throughout the State of Washington to the taxing authorities and the public in general that he was an auditor, and that beyond that, he did [4081] audit and that, in that atmosphere, I will now have to proceed with a jury, long tired and wants this case to end, I am compelled to proceed in that atmosphere, the cold, hard way of asking a question, repeated with exhibit after exhibit, and taking the ruling of the Court, and I can't prove these things, thereby, of course, antagonizing a tired jury.

I feel that your Honor—I don't know on what grounds you sustained the rejection of the exhibit, and will such like exhibits, but I think, subconsciously, perhaps, you are also tired, and not the only one, and that you realize we have no alternate jurors, and there is the danger that someone might get ill, and there would be a mis-trial, but that can have no bearing upon the right of the Defendant Forster to cross-examine this defendant upon the witness stand upon matters material to the issues in this case, and these matters which I will endeavor to cross-examine on, following the rejection of this, are so material, that with the ruling and the position taken by the Government in support of Mr. Taylor on the witness stand, it makes it utterly impossible in this continuing atmosphere to have a fair trial.

I am not crying. I am presenting it as a cold, legal proposition, basing my record now at [4082] this late stage where I didn't want any error in this case for the purpose of appeal, because as far as the effect is concerned, on this tired jury, the Court might as well direct a verdict of acquittal for Taylor in the protection that has been given him and of guilty to Forster; and I rely upon appeal, and appeal only, because we are prevented, as it has turned out, from being able to present our case as against the, practically the, chief witness for the Government in full and upon matters that are strictly in issue, the only matters, when you come down to the final analysis, that are issues in this case, which I cannot prove or disprove, the intent or inner workings of the mind, except by circumstantial evidence. Those things that he did, and those things that he wrote and the things that he signed. I am deprived of that, and being so deprived, I have one of two options: to cease questioning, or proceed, realizing just where I am headed, and I am now headed, as I say, as we proceed, directly and deliberately, in making a record, offensive as I know from the time element that will be to the jury, in taking the time to do it, but it will have to be done separately as each matter arises.

I will renew this motion later, without reiterating what I have here stated in the grounds [4083] for the motion.

Mr. Moriarty: May it please the Court,——

The Court: (Interposing) Before the Court

hears other counsel, the Court will make this comment:

Counsel's comment, of course, is part of the record and may be properly stated. I might say, in response, that the Court has, in all respects sought in every way to see that a fair trial is granted to all defendants, and believes that all defendants are entitled to a fair trial. In making my ruling, I make it on this document on the record made only without relation to any other documents that are to be offered.

Mr. Moriarty: May it please the Court——

Mr. Griffin: (Interposing) Before you speak may I say I did not want to state or infer that consciously your Honor was not endeavoring to grant a fair trial. What I mean to say is that the entire atmosphere and the rulings that you have felt compelled to make from my position make it impossible, not that your Honor consciously for a moment had any thought of not granting a fair trial.

If you rule on every question I ask, sir, from here on in, I can assure you that I wouldn't consider for a moment that you didn't think from where you sat, that you were not granting a fair trial, so that I don't [4084] want any personality in that at all.

The Court: I am certain of that, Mr. Griffin, and I am sure that is true of all Counsel. I thought, in view of the comment of Counsel, that the Court should add that comment.

Mr. Moriarty: In view of Mr. Griffin's statement, in view of that, some of the matters may be left un-

said by the United States Attorney. However, there are a number of things said as to the Government's lack of diligence in inculcating Mr. Taylor, and for the record, I make this statement, that perhaps the reason we did not refer to Mr. Taylor's prior conviction, was because from the opening, and all through the last two months on trial it has been referred to, and indirectly stated, and during Mr. Taylor's direct examination, he referred to the time he was at McNeil Island, and we saw no further reason to inquire, because we knew it was fully in the record and would be a waste of time and for the further reason, we felt, after A-83 was entered, a document in 1939, and was introduced solely for the purpose of establishing that Mr. Taylor had posed and held himself out as an auditor at that early date. We made no objection to it, and particularly, we made no objection in view of the fact that Mr. LeSourd, on behalf of his client, stipulated he held himself [4085] out during this period and would agree to that stipulation.

These documents now being introduced in evidence, particularly A-84, which is the subject of the motion, is the document Mr. Taylor signed, but there is no relevancy to this matter in view of the stipulation. It would be my opinion that Mr. LeSourd's stipulation should satisfy Mr. Forster, that from the time of 1939 down to the period covered by the Indictment, he posed and held himself out not only to be an auditor and an accountant, but a business analyst and an Income Tax Adviser.

Now, the vice of attempting to have all these docu-

ments in is that it is irrelevant, except to the ultimate fact that Counsel has been willing to stipulate, and it is the opinion of the Government that the case should be presented clearly on what the Government contends, that each and every one of the defendants filed and joined in the filing of a fraudulent income tax, and we do not want that lost sight of, by a mass of documents, that Mr. Taylor signed some documents and added the word "auditor." We will continue our objection.

The Court: You may call the Jury.

Mr. Moriarty, the Clerk calls my attention to the fact that you stated A-83 was in. A-83 is not in.

Mr. Moriarty: The business accounts?

The Court: The letter is not in.

Mr. Moriarty: At the time it was offered, the stipulation was made.

The Court: The stipulation was made which covered the letterhead.

Mr. Moriarty: Yes. I presumed it had been admitted. Anyway, it was only offered for that purpose, and the stipulation covered it.

The Court: Yes, the stipulation covered the fact that would have been established by the letter.

Mr. LeSourd: By the letterhead.

The Court: Yes.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: Yes, your Honor.

The Court: You may proceed, Mr. Griffin. [4087]

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, resumed the witness stand and testified as follows:

Cross Examination (continued)

Mr. Griffin: Will you mark this document for identification, please?

The Clerk: Defendants' Exhibit No. A-85 marked for identification.

(Defendants' Exhibit No. A-85 marked for identification.)

Q. (By Mr. Griffin): Mr. Taylor, handing you Exhibit A-85 for identification, I will ask you if that is a photostatic copy of the Excise Tax Return of Hans Forster-Alpine Dairy, for the month of November and December, 1948?

A. The original copies are in the file. That is a photostat.

Q. Is this your signature on the second sheet of the photostat?

A. Yes, that is my signature.

Q. Yes? A. Yes, sir. [4088]

Q. And right underneath it, the word "auditor" is your writing? A. That is correct.

Mr. LeSourd: Same objection, your Honor.

Mr. Moriarty: Same objection.

Mr. Griffin: I offer A-85.

(Testimony of L. Hicks Taylor.)

The Court: The same objection?

The Court will sustain the objection and the same showing may be made by Mr. Griffin.

Mr. Griffin: These will take offers of proof in the absence of the Jury.

The Court: Yes.

Mr. Griffin: Later, if the Court please, I will have to proceed with these.

Will you mark this for identification, if the Court please?

The Clerk: Defendants' Exhibit No. A-86 marked for identification.

(Defendants' Exhibit No. A-86 marked for identification.)

Mr. LeSourd: If we have a number of these certified copies, we will stipulate to the identity if they are certified copies.

The Court: Do you wish to identify each exhibit, Mr. Griffin? [4089]

Mr. Griffin: Yes, your Honor.

Q. (By Mr. Griffin): Mr. Taylor, I hand you A-86, and I ask you if that is a photostatic copy of the Excise Tax Return of the State of Washington for the period March-April, 1949, for Hans Forster and Alpine Dairy? A. Yes, it is.

Mr. LeSourd: I believe that is sufficient for the identification.

Q. (By Mr. Griffin): Is that your signature?

Mr. LeSourd: Just a moment. I think that is sufficient for the identification.

(Testimony of L. Hicks Taylor.)

The Court: If there is any question about it, the Court will permit further identification.

Q. (By Mr. Griffin continuing): Is that your signature?

The Court: You may answer.

A. Yes, it is.

Mr. LeSourd: All right, that is sufficient.

Q. (By Mr. Griffin): Your writing also, the word "auditor," under your signature?

Mr. LeSourd: If your Honor please, here we are simply by this means trying to avoid the Court's [4090] ruling. It is simply taking time of this case unnecessarily. If it is the word "auditor," Mr. Griffin is interested in, I again call the Court's attention to the fact that there was testimony on direct examination of this witness indicating he used "accountant" and "auditor" interchangeably through these years. We are wasting time in this procedure.

The Court: Well, Mr. Griffin desires to make a record, and the Court will not in any way——

Q. (By Mr. Griffin interposing): Your answer is "yes" to that, Mr. Taylor? A. Yes, sir.

Mr. Griffin: I offer A-86 for identification.

Mr. LeSourd: Same objection.

The Court: Mr. Moriarty, you have the same objection?

Mr. Moriarty: Yes, we have the same objection.

The Court: The ruling will be the same, and it will be rejected on the same showing.

Mr. Griffin: Will you mark this for identification?

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit A-87 marked for identification.

(Defendants' Exhibit No. [4091] A-87 marked for identification.)

Q. (By Mr. Griffin) Mr. Taylor, handing you Exhibit A-87 for identification, I will ask you if this is a Compensating Tax Return of the Issaquah Creamery Company subscribed by you over your signature May 28, 1948? That is a photostatic copy.

A. That is correct, and I signed it in the name of "auditor." I wrote it on there.

Mr. LeSourd: If your Honor please, may the record show our objection to this manner of identification of the documents?

The Court: The record may so show.

Mr. Griffin: I offer A-87.

Mr. LeSourd: Same objection.

Mr. Griffin: The reason for the duplicates is that this is Issaquah and the others were Alpine.

The Court: Same objection, and the same ruling.

Mr. Moriarty: That was 87?

Mr. Griffin: 87, yes.

Will you mark this document for identification, please?

The Clerk: Defendants' Exhibit A-88 marked [4092] for identification.

(Defendants' Exhibit No. A-88 marked for identification.)

Q. (By Mr. Griffin): Mr. Taylor, were you the auditor for the Issaquah Creamery Company?

A. I was not.

(Testimony of L. Hicks Taylor.)

Q. Handing you Exhibit A-88, I will ask you if this is a photostatic copy of a letter on your letterhead written by you?

A. This is a photostatic copy of a letterhead of L. Hicks Taylor and Company, requesting an extension of 30——

Mr. LeSourd: (Interposing) Just a moment, Mr. Taylor. This is merely a matter of identification.

A. Yes.

Q. (By Mr. Griffin): Your signature, Mr. Taylor? A. Yes.

Mr. LeSourd: Same objection.

Mr. Moriarty: Same objection.

The Court: May I see it?

(Whereupon, document was handed to the Court.)

The Clerk: Defendants' Exhibit A-89 marked for [4093] identification.

(Defendants' Exhibit No. A-89 marked for identification.)

The Court: I feel the Court should ask a question of the witness:

Mr. Taylor, in handling the tax matters for Mr. Forster, did you execute various forms and designate yourself as auditor?

The Witness: As a rule, I referred to them that way in State returns, yes.

The Court: You designated yourself "auditor"?

The Witness: Just a signature.

I could have put "secretary" or "treasurer" or

(Testimony of L. Hicks Taylor.)

anything else on them. It was merely a habit of following out with the forms.

The Court: You did designate yourself "auditor"?

The Witness: I signed some of them there, yes.

The Court: Objection sustained.

Mr. Griffin: Sir?

Mr. LeSourd: I didn't hear.

The Court: I will sustain objection to the document.

Q. (By Mr. Griffin): Mr. Taylor, handing you Exhibit A-89 for identification, [4094] is that your signature?

A. It seems to be the carbon copy with my signature inscribed through the carbon.

Q. You dictated or——

A. (Interposing) I wrote the letter.

Mr. Griffin: Mr. LeSourd?

(Whereupon, document was handed to Mr. LeSourd by Mr. Griffin.)

Mr. LeSourd: Same objection, your Honor.

The Court: I am inclined to overrule the objection on this.

Mr. Moriarty: The Government made no objection to that letter.

Mr. LeSourd: May I ask your Honor if the admission is limited to the point we are on now, the question of the use of the word "auditor"? Otherwise, I would object to its relevancy. It is in 1942.

(Testimony of L. Hicks Taylor.)

The Court: Yes, it is on that only.

Mr. LeSourd: It is limited to that, very well.

Mr. Griffin: May I read the exhibit, your Honor?

The Court: You may.

Mr. Griffin: Dated December 18, 1942, to Mr. T. M. Jenner, "In re Penalty Assessment, Alpine Dairy, Issaquah Creamery Company," with code numbers and some dates. [4095]

Mr. Moriarty: The date?

Mr. Griffin: The letter is December 18, 1942, but it has code numbers, and other dates on it.

"The writer is Auditor and Secretary of the Issaquah Creamery Company and Alpine Dairy, have always prepared the Excise Tax Returns for them, the returns for July and August were not sent in on time because it was necessary for me to file a great many papers for the Dairy in the case for the O.P.A. on the School Milk Delivery. This company does not have to take advantage of delay for any financial reason, it being just one of those things that happen once in a while, and I feel the request for relief from penalty is not asking too much from a taxpayer who contributes a large sum each period, especially when this is about the first offense. I talked with Mr. Carney about the matter, and paid the period September and October a month before it was due to offset any loss to the State in the delay.

"It has always been my opinion that the Tax Commission were not interested in penalties, where a reasonable explanation of the delinquency is sub-

(Testimony of L. Hicks Taylor.)

mitted, and I believe that you feel the same way about it.

"Thanking you in advance for the many courtesies you have shown, and hope you can persuade the Commission to withdraw the penalty. I am,

Yours very truly,

L. Hicks Taylor."

Q. (By Mr. Griffin): Mr. Taylor, why did you represent to Mr. T. M. Jenner, Chairman of the Tax Commission of the State of Washington that you were the auditor of the Issaquah Creamery Company and the Alpine Dairy?

A. I was making an effort in Mr. Forster's behalf to save him penalties.

Q. As a matter of fact, you did prepare all the Excise Tax Returns—that is, the business tax returns—for Alpine and Issaquah, didn't you?

Mr. LeSourd: Objected to as irrelevant and immaterial and improper cross-examination.

The Court: Objection overruled.

A. In my assignment of holding them and working the general ledger, it was very much simpler for me to prepare the returns and I agreed to do it during that period. [4097]

Q. (By Mr. Griffin): You did it during the entire period?

A. I certainly did, every one of them.

Q. And you wanted to—in this letter, you designated yourself as Auditor, you say, because you wanted to save Mr. Forster a penalty, is that correct?

(Testimony of L. Hicks Taylor.)

A. Not necessarily, just an habitual statement.

Q. Using that term "habitual," sir, I will ask you if you did not subject Issaquah Creamery and Hans Forster to penalty after penalty from the State of Washington because of your neglect in filing income—in filing Excise Tax Returns on time?

Mr. LeSourd: Objected to as irrelevant and immaterial, and not proper cross.

The Court: Objection sustained.

Mr. Griffin: Now, in the light of the witness's answer, I have to follow that one on through, if the Court please.

Will you mark these letters and notices as one exhibit?

The Clerk: Defendants' Exhibit A-90 marked for identification.

(Defendants' Exhibit No. A-90 marked for identification.) [4098]

Q. (By Mr. Griffin): Handing you Exhibit A-90 for identification, Mr. Taylor, I will ask you if that file, for short for identification, are not letters from you to the State of Washington Excise Tax Division, and from that Division to you, and include the penalties assessed from time to time as therein indicated because of your failure to file the returns on time?

Mr. LeSourd: If your Honor please, I will object to the form of that question, and ask that the remarks of Counsel in it be stricken, and the Jury

(Testimony of L. Hicks Taylor.)

be instructed to disregard them. It is not a proper part of an identification question, and if this document is irrelevant and immaterial, as I suspect it is, it almost puts upon this Defendant the necessity of meeting irrelevant and immaterial matters, just by the form of the question.

Mr. Griffin: I used the form, if the Court please, only to shorten the witness's answer in identification.

The Court: I might advise the Jury that the procedure is—here is, for the purpose of identifying a document, which may or may not become evidence. Any question put by counsel in that connection is not to be considered by you as any evidence at all, and with that comment, the Court will not strike the answer—I mean, the question.

(Whereupon, there was a brief pause.)

The Witness: May I ask what the question was, please?

The Court: The question is whether you recognize those documents and know what they are.

The Witness: May I ask, is this just to identify them and not to comment on them?

The Court: That is the sole purpose.

A. Part of the documents have come from my office, and part of them have probably been made in the Issaquah office, and part of them were mailed to Issaquah and part were mailed to me. There is a copy here in my pencil writing, but these evidently became property in my files. Part of the letters were written by me.

(Testimony of L. Hicks Taylor.)

The Court: In other words, you have seen those documents at one time or another?

The Witness: They all came from my files that I deposited at Issaquah.

Q. (By Mr. Griffin): And that was the first time when you made that deposit in Issaquah, in April, 1950, that any of these Excise Tax Returns, or the accompanying documents, or the penalty assessments, were ever in the possession of Hans Forster or the Issaquah Creamery or the Alpine Dairy, wasn't it? [4100]

Mr. LeSourd: Well, your Honor, I will object to this as irrelevant and immaterial and improper cross-examination, and again object to the form of the question.

The Court: The Court will overrule the objection.

A. That appears to be conjecture. Many of those records passed through the hands of Issaquah Creamery and Alpine Dairy before they came into my possession.

Q. (By Mr. Griffin): If any of them did, you wrote the Department in question to thereafter send them direct to you, didn't you?

A. That is possible, yes.

Q. Not only possible, but is a fact, isn't it?

A. It is possible.

Q. So that you kept in your office in Seattle these copies of the Excise Tax Returns that you made out?

A. Certainly, they were part of my work.

(Testimony of L. Hicks Taylor.)

Q. And you kept in your office in Seattle the copies of the Income Tax Returns that you made out? A. That is correct.

Q. Mr. Forster obtained his copy, his wife's copy, Issaquah Creamery, Alpine Dairy copies of the income tax returns for all the years they had been made [4101] in April, 1950, just before you went to McNeil Island and took them out to Issaquah Creamery, didn't he, for the first time?

A. Mr. Griffin, my office had a special place for all Issaquah and Alpine files, and it was continuously and always open to Mr. Forster's inspection at any time he cared to see any of the papers. He could have them at any time.

Mr. Griffin: May I have the question read, if the Court please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: You should answer that "yes" or "no," and then make such explanation as you see fit, Mr. Taylor.

A. (Continuing) Yes; he received them then because they were all well arranged and filed and placed in position so that anyone could go through them year by year.

Mr. Griffin: I offer A-70.

The Clerk: A-90.

Mr. Griffin: A-90, pardon me, which is that group just identified.

Mr. LeSourd: I would like to see them. [4102]

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Pardon me. I simply anticipated your objection and the ruling, is all.

(Whereupon, there was a brief pause.)

The Clerk: Do you have A-64?

Mr. Patten: No.

The Court: Is that the one, Mr. Griffin, you have marked on the examination of another witness?

Mr. Griffin: Yes, sir.

The Clerk: I have it.

(Whereupon, document was handed to Mr. Griffin by the Clerk.)

Mr. Griffin: May I proceed while they look at the other?

The Court: Yes, you may.

Q. (By Mr. Griffin): Mr. Taylor, when was it that you first met Hans Forster; what year?

A. It is my recollection, in 1928 or 1929.

Q. And at that time, where was Mr. Forster residing? A. In Issaquah.

Q. And was he in any business?

A. He was associated with Mr. Peters in the Issaquah Creamery Company.

Q. Were you the accountant at that time for [4103] the—were you Auditor at that time for the Overlake Golf Club?

Mr. LeSourd: Objected to as irrelevant and immaterial, and improper cross-examination.

The Court: I take it it is preliminary?

Mr. Griffin: Yes, sir.

The Court: Objection overruled.

(Testimony of L. Hicks Taylor.)

A. I was performing a service for the Overlake Golf Club. I was not the auditor.

Q. Were you at that time performing any service for the Issaquah Creamery?

A. I was performing service for Mr. Peters for the Issaquah Creamery, yes.

Q. And you continued in that service, did you, until Mr. Forster acquired Mr. Peters' interests and the bank's interest in the Issaquah Creamery?

A. I continued with them right through this whole period.

Q. What was the occasion of your continuing?

A. Just continued, I guess; nobody discharged me.

Q. Nobody; as a matter of fact, that is the way it was, wasn't it? You were there performing the services you were then performing from an accounting standpoint, and you weren't discharged, and you weren't employed; [4104] you continued right on for the years that followed; isn't that the way it happened?

A. Well, I rather think I was employed when it started.

Q. I am not speaking about your employment, I am speaking about the physical thing that occurred between you and Mr. Forster at that time; you just continued right along without anything being said about it, isn't that correct?

A. Yes.

Q. And you continued performing the same services for Issaquah Creamery then under the propri-

(Testimony of L. Hicks Taylor.)

etorship and ownership of Mr. Forster as you performed for the Issaquah Creamery under Mr. Peters; correct? A. Up until 1940, yes.

Q. Did you make—let's deal with this matter of an audit for a moment. You have used the term a great many times. What is an audit, as you use that term?

A. Would you like me to explain the scope of an audit?

Q. I want you to explain your definition, or scope, whatever it may be, of an audit as that term has been used by you from the witness stand.

A. There is quite a distinction between the work [4105] that I performed, and an audit.

Q. I am not asking you anything about that. I am asking you what you mean by the term "audit." as you have used it from the witness stand in this case.

A. An audit is generally a certified report of the condition of a concern, and there is a definite letter attached to every audit, stating the scope in which it followed.

Q. I hand you Exhibit A-64 for identification and I will ask you what that is?

A. This is an audit that I made of the books in 1932.

Q. What books?

A. The books of the Issaquah Creamery. The original request for this audit was made by Mr. Peters.

Mr. Griffin: I offer A-64 for identification.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: In view of the testimony, your Honor, at this time I will withdraw the objection previously made to this exhibit.

Mr. Moriarty: The Government has no objection.

The Court: Exhibit A-64 may be admitted.

(Defendants' Exhibit No. A-64 admitted in evidence.)

Mr. Griffin: May I read the introduction and advise the Jury what the cover sheets of the audit [4106] are?

The Court: You may.

Mr. Griffin: "Mr. Hans Forster, President, Issaquah Creamery Company, Issaquah, Washington.

"Dear Sir:

"Pursuant to your request, an audit report has been prepared from your books and records. Cash and Banks, were reconciled with the bank statements but certificates were not requested from the bank."

Q. (By Mr. Griffiin): What do you mean by that, Mr. Taylor, that the cash in the bank was reconciled?

A. As a rule, in the scope of an audit, the bank will give you a letter as to the final balance at the close of a year.

Q. But you reconciled the cash shown on the books of the Issaquah Creamery Company with the bank, with the amount of money in the bank, didn't you? A. As of December 31, 1932.

Q. You did that?

A. I did that, yes, sir.

(Testimony of L. Hicks Taylor.)

Q. Accounts receivable——

Mr. Griffin: Strike that. [4107]

Q. (By Mr. Griffin continuing): "Notes receivable were verified and found to agree with the records."

What did you mean by that, Mr. Taylor?

A. The note account shown in the ledger agreed with the distribution of the notes.

Q. That is, you checked and verified?

A. As far as I remember, yes.

I state so.

Q. "Accounts receivable were reconciled and all accounts considered doubtful and uncollectible were set up in reserve for bad and doubtful accounts."

What do you mean that the "accounts receivable were reconciled?"

A. The detail of the list of the various accounts was proven to the total shown in the control of the accounts receivable ledger.

Q. "Inventories were accepted as presented, but were verified as to accuracy of extension."

What do you mean by that?

A. That is right, the inventory calculation was laid on the test, and I tested the calculation as to cost against correctness. I took one here and there to determine that they were reasonably correct.

Q. "Milk routes." This item was arrived at by taking the actual cost of development or purchase, [4108] whichever the case may have been, which, according to authority, a good milk route is valued

(Testimony of L. Hicks Taylor.)

at $3,000 so that our routes as shown would have been very reasonable.

What do you mean by "our routes"?

A. The routes as shown on the ledger page as to the value set up appeared to be reasonable.

Q. Who set up that value?

A. That was on the books.

Q. Who set up the value?

A. I wasn't doing the detail bookkeeping.

Q. Who set up the books at Issaquah Creamery?

A. The books were set up before I started working there.

Q. And when did you start working there?

A. In 1928.

Q. "Equipment." Shows the cost of all equipment, in the opening of the books the appraisal was taken, General Appraisal Company made up the same.

"Reserve for depreciation. All equipment has been depreciated as near as possible to the Federal Regulations."

What do you mean by that?

A. The Federal Government, or the Treasury Department, publishes a form of depreciation, or a suggested depreciation rate of various types of equipment, [4109] and in making this analysis, I looked at the depreciation schedule to see as much as possible that the general rates were being carried out.

Q. "Notes, accounts and cream check payable

(Testimony of L. Hicks Taylor.)

accounts. Have been checked to the books and found to be in balance. A schedule is hereby attached."

By that you mean that you checked and reconciled the note accounts and cream check payable accounts with the books, didn't you?

A. That is what the report shows.

Q. "Creamery Package Company. They hold six contracts amounting to $2,602.55, and an open account of $9,233.24, a total of $11,875.79. The contracts appear to be well current, the open account was increased by the management with the understanding that it would be paid as we could."

What do you mean by "paid as we could"?

A. I was secretary of the corporation.

Q. You were secretary? A. Yes.

Q. Not acting secretary, you were secretary?

A. I was acting secretary, yes. And had a qualifying share, no ownership.

Q. "Northwest Condensery Company. Balance appears on records as $6,825.00, which is correct."

How did you determine that?

A. By the record.

Q. "Contracts payable. Truck, stoker, and Frigidaire contracts which are paid up to current date. See schedule."

"Miscellaneous. Notes in the amount of $2,900 with the Bank are secured by King County warrants in the amount of $3,014.19 which is shown in Accounts Receivable.

"Conclusion. Surplus account was increased in the amount of $2,632.38 to enter Real Estate that

(Testimony of L. Hicks Taylor.)

was not entered on the books when they were opened. The assets of $102,909.12 less the liabilities of $52,309.80 leaving a capital and surplus of $50,-599.32 in my opinion reflects the true worth of your business as of December 31, 1932."

And you signed "L. Hicks Taylor, Public Accountant," didn't you?

A. Yes. May I see that document for a moment?

The Court: Will this be an agreeable time for a recess?

Mr. Griffin: Yes, your Honor.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-morning recess, and [4111] the Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

(Whereupon, the Jury retired from the court room.)

The Court: You may step down.

The Witness: Thank you.

(Whereupon, the witness withdrew from the witness chair.)

The Court: Before we recess, A-91, is there any objection?

The Clerk: A-90.

The Court: Yes, A-90.

Mr. Moriarty: We are examining it at this time, your Honor.

The Court: You are examining it?

Mr. Moriarty: Yes, we just received it.

(Testimony of L. Hicks Taylor.)

The Court: All right, we will recess for fifteen minutes.

(Whereupon, at 10:32 o'clock a.m. a recess was had in the within-entitled and numbered cause until 10:45 o'clock a.m. April 16, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: Before we call the Jury, I might [4112] advise Counsel I have just filed an original and a copy of a preliminary draft of the proposed instructions.

Now, in filing them, I don't want to indicate that I will not consider other instructions.

There are, particularly as requested by Defendants there are, several requested by Mr. Taylor and Mr. Forster—yes, Mr. Forster—which I will hear argument on, and particularly I might, if you are interested in knowing which ones I would like to hear argument on, I might tell you at this time.

In regard to Mr. Forster, I will hear argument on requested 15, 21 and 24, which I take it involve the same matter. 22——

Mr. Moriarty: 13, 21——

The Court: 21 and 24 will involve, I think, the same theory.

22, the last sentence. I think I have incorporated the first, and 25.

Both for and in response.

And, in Mr. Taylor's requested, 22, 25, 28, 29, 30 and alternates, and 34.

(Testimony of L. Hicks Taylor.)

So that I will hear discussion on those at such time as is proper.

I feel in the main that the Government's requests are covered. [4113]

Mr. Moriarty: When you said alternate 34, that means they have——

The Court: (Interposing) I think on 30, there were four or five alternates to it.

Mr. Moriarty: At least four or five.

The Court: In regard to the motion this morning, Mr. Griffin, I don't know that the Court acted on it. I will now deny it.

Mr. Griffin: Very well.

The Court: In regard to discussion on it, today or Tuesday?

Mr. Griffin: I think Tuesday would be better to do it. All at once. There may be another one in regard to this today.

The Court: All right.

Mr. Keesling, I meant to also state, you not having filed any requests, any, of course, that you may offer the Court will consider. You might file those you think are not covered.

Mr. Keesling: Yes.

The Court: You may call the jury.

(Whereupon, the jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the court room? [4114]

Mr. Moriarty: Yes, your Honor.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Your Honor asked, on A-90, if we have examined A-90 and we have in the recess examined it. I think Mr. Griffin offered Exhibit A-90.

Mr. Griffin: Yes.

Mr. Moriarty: We have no objection to the exhibit.

Mr. Le Sourd: We will make the same objection, your Honor. It is irrelevant and immaterial, and improper cross-examination.

Mr. Griffin: Perhaps your Honor would like to look at that?

The Court: I think I will look at these, if I may.

Mr. Griffin: Yes, sir; and reserve ruling on it?

The Court: And reserve ruling on it.

Mr. Griffin: That is offered for a different purpose.

The Court: Yes, I understand it is for a different purpose. I recall, in connection with this case, are documents which were identified and not called to the attention of the Defendant Forster until 1950, under the testimony. [4115]

Mr. Griffin: Yes.

Mr. LeSourd: No, your Honor. Many of these documents, the witness stated, were correspondence with the Issaquah office, rather than himself, but finally came into his files. Actually, there is a serious problem of identification on many of them, but he stated that they were all in his file, eventually.

(Testimony of L. Hicks Taylor.)

The Court: I will look them over, but if there is occasion for argument or discussion, the Court will give you an opportunity.

Mr. LeSourd: Yes, sir.

Mr. Griffin: I had finished reading the first two pages of Exhibit A-64.

Q. (By Mr. Griffin): Now, those first two pages that I read, Mr. Taylor, are what you referred to as the certificate to your audit, is that right?

A. Audit report, yes.

Q. The first sheet is a balance sheet of the Issaquah Creamery Company, showing assets broken down and liabilities broken down, and referring to that sheet, Mr. Taylor, which is the third sheet of Exhibit A-64 entitled "Balance Sheet," you prepared once each month from that time of December 31, 1932, all through and including at least December 31, 1949, a balance sheet [4116] comparable as to form and substance of sheet 3 to Exhibit A-64, did you not?

A. Yes, from the general ledger, I prepared it.

Q. And delivered such—when I say you prepared it, you prepared and delivered such a sheet generally once each month, sometimes omitting the month of December?

A. No month was ever omitted.

Q. All right, once each month to Mr. Forster?

A. Yes, without audit.

The Court: Is that question through 1939?

Mr. Griffin: 1949.

The Court: 1949?

(Testimony of L. Hicks Taylor.)

Mr. Griffin: 1949.

Q. (By Mr. Griffin): And did you submit any —you continued forth through 1949 during the first two months, did you not, of 1950?

A. It is my recollection that I posted the books for the two months of 1950.

Q. The fourth page is entitled "Issaquah Creamery Company, Profit and Loss, December 31, 1932" and broken down into sales, inventory, gross profits, operating expenses and eventually net profit, and including on that sheet a percentage breakdown; is that [4117] correct?

A. That is what it displays, yes.

Q. You continued from the time that you prepared A-64 to submit a comparable sheet once each month of profit and loss of the Issaquah Creamery Company to Mr. Forster, did you not, eliminating at some point along the line the percentage breakdown that you had? A. Yes.

Q. The next heading is Depreciation Schedule.

Who prepared the Depreciation Schedule, Mr. Taylor? That is composed of one sheet.

A. It is my recollection that I performed this service.

Q. The next are comparative balance sheets for January and December, 1932.

From time to time, not necessarily monthly, but from time to time thereafter, you prepared and delivered to Mr. Forster, did you not, comparative balance sheets for various months or periods?

A. It is possible. I don't recollect exactly.

(Testimony of L. Hicks Taylor.)

Q. The next heading are Accounts Payable, consisting of two pages. Did you prepare those pages of Accounts Payable, with the eventual total?

A. Yes, I prepared these with this audit.

Q. From what source did you obtain the information [4118] of the Accounts Payable?

A. Mrs. Eck, or Miss Neukirchen, and I, checked out all the accounts payable at the office.

Q. How do you mean you checked out all the accounts payable?

A. We went through all the bills and invoices and verified them.

Q. And then, next, is headed, one sheet, notes receivable, December 31, 1932, listing separately in amounts. Did you likewise check through at the Issaquah office the documents from which you obtained the information of the various payees of notes payable and the amounts due?

A. As I recollect, the notes themselves were in the office, and that was the balance showing at that time on the notes which agreed with the general ledger.

Q. You checked them?

A. Yes, we checked them.

Q. And the next sheet is Notes and Contracts Payable, and the same is true, I assume, Mr. Taylor, of that breakdown? A. Yes.

Q. And the next sheet are Accounts Receivable running for five sheets, a breakdown of each account, is it not—that is, money due from whom and the amount? [4119]

(Testimony of L. Hicks Taylor.)

A. That is a list of the various individual debtors to the Issaquah Creamery Company.

Q. From what source did you obtain that?

A. From an accounts receivable ledger.

Q. Did you check them? A. I did.

Q. Did you find them correct with the alterations that you have made, assuming that those are alterations? A. That is probably after.

Q. I am referring to pencil notations. And then a sheet, route drivers' accounts at the top, and a recapitulation at the bottom of Accounts Receivable, Route Accounts, Bad and Doubtful accounts, and a total?

A. That is a recapitulation, yes.

Q. And the next one, notes and accounts charged with a breakdown of the name of the individual and the amounts. From what source did you——

(Whereupon, the witness pointed to the exhibit.)

Q. (Continuing) "Notes and accounts charged to profit and loss," thank you.

A. That is correct.

Q. From what source did you obtain the information? Is that a write-off?

A. That was made to profit and loss, yes.

Q. From what source did you obtain the information [4120] to write off those notes?

A. From the accounts receivable ledger and the note records.

Q. And then the next page is Accounts Receivable Recapitulation?

(Testimony of L. Hicks Taylor.)

A. (Witness nodded in the affirmative.)

Q. And the next "Bad and Doubtful Accounts, Depot," D-e-p-o-t (spelling)? A. Depot.

Q. Broken down; I assume you obtained that same information from the records?

A. That is correct, from the records.

Q. And the last page is simply a continuation of the bad and doubtful accounts, depot?

A. That is what it appears to be, yes.

Q. So, as of December 31, 1932, at the request of Hans Forster, President, Issaquah Creamery Company, you prepared this audit, A-64?

A. That was prepared sometime early in 1933.

Q. And you continued thereafter to prepare audit reports, did you not, for Mr. Forster and the Issaquah Creamery?

A. I do not recollect that I did continue thereafter.

Mr. Griffin: Will you mark this for identification? [4121]

The Clerk: Defendants' Exhibit No. A-91 marked for identification.

(Defendants' Exhibit No. A-91 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-91 for identification, I will ask you what that is?

A. Would you like me to describe this sheet?

Q. Yes, if you will, please. First, you understand, it is for identification; it is not in evidence.

A. This is a document I prepared.

Q. By "document," it is a ten-year period, 1938

(Testimony of L. Hicks Taylor.)

to 1947, document of Alpine Dairy operations, is it not?

A. It is the profit and loss for those periods.

Q. Including a balance sheet of Apex Farms, December 31, 1947? A. That is right.

Q. And comparative profit and loss statement, Apex Farms, for the years 1946 and '7?

A. That is correct.

Q. And you enclosed it in that folder for delivery to Mr. Forster, was it?

A. This was apparently taken from my files.

The Court: The question is, did you?

The Witness: No.

Mr. Griffin: I offer A-91.

Mr. LeSourd: We have no objection, your Honor.

Mr. Moriarty: We have no objection.

The Court: A-91 may be admitted.

(Defendants' Exhibit No. A-91 admitted in evidence.)

Q. (By Mr. Griffin): As I understand you to say, sir, you did not enclose this statement in the jacket, in this folder?

A. Those papers were returned to me, and I enclosed them in that jacket to remain in my files.

Q. When did you enclose them in this jacket?

A. At the time they were returned to me.

Q. When was that?

A. Probably in 1948, sometime.

Q. The jacket referred to is, you say, your files?

A. That is correct; that is my cover, one of mine that I had in my office.

(Testimony of L. Hicks Taylor.)

Q. And what is meant by "Auditor's Report"?

A. When I made a complete audit of any set of books, or small set of books, I used that cover.

Q. How many complete audits have you ever made, Mr. Taylor? A. Not extensively.

Q. From what source did you obtain the information for Alpine Dairy operations, ten year period, 1938 to 1947?

A. Might I have the schedule just to refresh——

Q. (Interposing) This one?

A. Might I have it, just to look at it?

Q. Surely.

A. To the best of my recollection, these figures shown here were taken from the profit and loss statement shown on the individual income tax return of Mr. Forster showing the Alpine Dairy operations, except the last one of February 28th, and that was probably taken from my work sheet.

Q. Did I understand you correctly that you used the income tax returns prepared by you—I am not sure that I did—that you used the income tax returns of Mr. Forster as prepared by you to give Mr. Forster a ten-year period picturization of the Alpine Dairy operations?

A. On each tax return, I usually prepared a profit and loss statement and just took those profit and loss statements and assembled them in that ten-year [4124] period.

Q. Nothing, then—insofar as Exhibit A-91 is concerned, of this ten-year picturization of the Al-

(Testimony of L. Hicks Taylor.)

pine Dairy operations, nothing at all to indicate whether it is correct or not?

A. It is taken from the tax returns, the profit and loss statements shown.

Q. When did Alpine cease to be a part of Issaquah Creamery, what year? A. 1940.

Q. So then you didn't take the years 1938 and 1939 from Mr. Forster's tax returns, did you?

A. It is possible that I took them from the Issaquah Creamery work sheets for those first two years, but the Alpine Dairy would have a profit and loss statement separate from the Issaquah Creamery.

Mr. Griffin: Will you mark this?

The Clerk: Defendants' Exhibit A-92 marked for identification.

(Defendants' Exhibit A-92 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-92 for identification, what is that?

A. That is a balance sheet and profit and loss [4125] statement of the Issaquah Creamery Company, Incorporated, as of December 31, 1933.

Q. Prepared by you? A. Yes.

Mr. Moriarty: 1933?

Mr. Griffin: 1933. The last one was 1932.

Mr. Moriarty: No objection.

Mr. LeSourd: If your Honor please, this document, I completely fail to see any relevance or materiality. I have examined these other documents he was offering on this question of audit. This one

(Testimony of L. Hicks Taylor.)

has nothing of any kind. It is similar in form to the balance sheets and profit and loss statements which were made for the years in question, which had no authorization or signature or letter attached, or anything else.

I fail to see the purpose of it, and object to it on that ground, your Honor.

The Court: Well, I take it it is offered to show the nature of the work being done in a period which may have had some bearing on the——

Mr. Griffin: (Interposing) On the latter period.

The Court: (Continuing) ——on what work was done later.

I would admit it conditionally, and if [4126] it would appear afterward as not material——

Mr. LeSourd: (Interposing) I have no objection as thus restricted, but, if admitted generally, it is admitted for the purpose of bringing some issue up in the year 1933 and it would have nothing to do with this case.

The Court: Well, I think we will overrule objection, and if some testimony comes in and upon some ground it may be properly moved against, you may make a motion.

Mr. LeSourd: Very well.

The Court: It may be admitted.

(Defendants' Exhibit A-92 admitted in evidence.)

Mr. Griffin: I will be asking questions which may reflect on your Honor's ruling.

Q. (By Mr. Griffin): A-92, the Issaquah Cream-

(Testimony of L. Hicks Taylor.)

ery Company balance sheet for December 31, 1933, and profit and loss statement December 31, 1933, are they comparable statements to that which you just testified to for the year 1932 in Exhibit A-64; is that correct?

Mr. LeSourd: Objected to. One is an audit, and the other is not.

The Court: It is up to the witness to answer the question. If the witness desires to see it, he may.

The Witness: Is there a question?

Mr. Griffin: The question is:

Q. (By Mr. Griffin continuing): The balance sheet and profit and loss sheet in Exhibit—what is it, A-91?—A-92, are comparable to the balance sheet and profit and loss sheet shown in A-64?

A. They are comparable in form only.

Q. In A-64, under fixed liabilities, what is this item of "Hans Forster, $13,526"?

Mr. LeSourd: Objected to as irrelevant and immaterial, and not proper cross-examination.

The Court: I think it is preliminary. The Court will overrule objection at this time.

I didn't get the question as to the figures, Mr. Griffin.

Mr. LeSourd: I don't see where this is preliminary. He is going back into some figures back in 1932 and 1933. As far as I can see, it is utterly immaterial to the case.

Mr. Griffin: Thirteen thousand——

The Court: (Interposing) It may be. I don't know.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: $13,526. [4128]

Q. (By Mr. Griffin continuing): What is that item, Mr. Taylor?

The Court: That is A-64, now?

Mr. Griffin: Yes, your Honor.

The Witness: Yes.

A. I did not comment on it. From my recollection, it is possibly undrawn salary, and might be some contribution, too.

Q. (By Mr. Griffin): In Exhibit A-92, what is the item under "Liabilities," "Hans Forster $20,509.50"?

Mr. LeSourd: Same objection, your Honor.

The Court: Well, I think the Court will overrule the objection.

A. It would be my recollection it would be either the undrawn salary, or maybe some contribution of money to the company.

The Court: I wonder if it wouldn't be a little clearer if we had a fuller statement of what that item is and where it is carried, Mr. Griffin?

Mr. Griffin: You mean the exhibit?

The Court: In the exhibit, yes.

Mr. Griffin: In A-64, it is an item under Liabilities, sub-item "fixed liabilities," the last item under fixed liabilities, of which there are four, and [4129] Hans Forster is under fixed liabilities.

The same is true as to Exhibit A-92, except there are two items under fixed liabilities; one is Hans Forster.

Q. (By Mr. Griffin): From what book or record

(Testimony of L. Hicks Taylor.)

in either 1930—at the end of 1932, or the end of 1933, would you pick up for entry to these balance sheets these items showing that Issaquah Creamery owed Hans Forster so many dollars and so many cents?

A. The bookkeeper would enter Mr. Forster's $2,000 a month salary to the debit, or to the charge, of management salary, and credit Mr. Hans Forster with $2,000. Then, whatever he withdrew would be charged against that account.

Q. And that was an account where anything else he withdrew in personal items would be charged, would it not?

A. That would be possible, yes.

Q. And Mr. Forster's salary in 1932 was $2,000 a month? A. As I recollect, yes.

Q. Which he did not draw?

A. Did not always draw all of it, no.

Mr. Griffin: Will you mark this document for [4130] identification?

The Clerk: Defendants' Exhibit A-93 marked for identification.

(Defendants' Exhibit A-93 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-93 for identification, what is that document, Mr. Taylor?

A. This is a balance sheet and profit and loss statement and a comparative increase and decrease of balance sheet items, and I have listed the notes

(Testimony of L. Hicks Taylor.)

receivable, accounts receivable, and contracts payable in conjunction with it.

Mr. Griffin: That is for the year ending December 31, 1934.

Mr. Moriarty: 1934, Mr. Griffin?

Mr. Griffin: Yes.

Mr. Moriarty: We have no objection, if the Court please.

Mr. LeSourd: If the Court please, we have no objection to A-93 if limited to show the work Mr. Taylor was doing during this period, which I assume is the purpose.

The Court: It may be introduced, and if used for any particular purpose otherwise, you will have to [4131] make objection as we proceed.

Mr. LeSourd: Yes.

The Court: A-93 will be admitted.

(Defendants' Exhibit A-93 admitted in evidence.)

Q. (By Mr. Griffin): Now, Mr. Taylor, I wish you would look at Exhibit A-92, under accounts receivable, for December 31, 1933, and Exhibit A-93, your comparative statement of accounts receivable, for the same date, and I will ask you if your balance sheet of A-92 does not show accounts receivable, $836.96—$18,360.96?

Mr. LeSourd: Is that the end of the question?

Mr. Griffin: That is the end of the first question.

Mr. LeSourd: I will object on the ground, your Honor, it is irrelevant and immaterial and improper cross-examination.

(Testimony of L. Hicks Taylor.)

The Court: I take it again it is preliminary. It may not be. The Court will have to overrule the objection, and consider a motion to strike, if there is one.

Q. (By Mr. Griffin continuing) The item is $18,360.96, is that correct? [4132]

A. I don't see any figure that compares with that anywhere.

(Whereupon, Mr. Griffin indicated a place in the exhibit.)

Q. The accounts receivable, Mr. Taylor, as shown by you in 1933 are in what amount?

A. $20,444.00.

Q. Yes, sir; what are they for the same time, as you have made a comparative statement, in Exhibit A-92?

Mr. LeSourd: Same objection, your Honor.

Q. (By Mr. Griffin continuing): They are $18,-360.96, aren't they?

Mr. LeSourd: Just a moment. They ask two questions. A-92 and 1933 are for the same year. I am a little confused.

Mr. Griffin: I don't wonder. I will withdraw the question and get back on these exhibits.

Q. (By Mr. Griffin continuing): The year—A-92, the year 1933, the accounts receivable, you show them $20,444, is that correct?

A. That is a combined accounts receivable, yes.

Q. In A-93 for the year 1934 in your comparative [4133] statement, you show that same item, $18,360.96, for the year 1933, don't you?

(Testimony of L. Hicks Taylor.)

A. It is possible there was an adjustment. I don't know. I can't recollect back all that length of time and tell you.

Q. I am just asking you to look at the two documents, sir.

A. They are not comparative in any way. You can't make a comparison.

Q. Oh, you can't? A. You can't.

Mr. LeSourd: Your Honor, I would like at this time to again raise my objection and move to strike this testimony. We are getting so far afield here in comparing particular items in 1933 and 1934 we could go on for six months on this. I think it is entirely improper.

The Court: It could be. I will have to proceed here, and the Court, after we have concluded the session, next Tuesday, will consider the motion, if you wish, Mr. LeSourd. You may proceed. Objection overruled. The motion is denied at this time, subject to your urging it again, if you wish.

Q. (By Mr. Griffin): Mr. Taylor, in Exhibit A-92, for the year 1933, [4134] you have written, have you not, accounts receivable, $20,444 as of December 31, 1933?

A. That is on the paper there, yes.

Q. In Exhibit A-93, for the year 1934, entitled Comparative Balance Sheet, January 1, 1934, which would be December 31, 1933, would it not?

Mr. LeSourd: Object to that assumption, your Honor. January 1st is not December 31st. There may be year-end adjustments.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: That is correct.

Q. (By Mr. Griffin continuing): In accounting, is it not that the December 31st balance is the starting balance for January 1st?

A. It would depend upon the circumstances.

Q. Would it depend on whether you charged something off to equipment? That is what I am getting at.

Mr. LeSourd: Object to the question.

Mr. Griffin: That is the question. That is where we are leading, if the Court please.

Mr. LeSourd: Object to the question and it is irrelevant and immaterial, and improper cross-examination.

The Court: The first question was a general question. The question now is a specific question, is that correct? [4135]

Mr. Griffin: Yes, your Honor. I will withdraw both of them and start over, if I may.

Q. (By Mr. Griffin): Is the starting balance of January 1st, in accounting practice, of any year, the closing balance of December 31st of the previous year?

A. Yes, we will agree with you.

Q. All right; so that, in Exhibit A-92 the cash balance, December 31st, 1933, is $1,023.95, isn't it?

A. That is correct.

Q. And in your comparative statement is the identical cash shown January 1, 1934?

A. That is correct.

Mr. LeSourd: If the Court please, will the rec-

(Testimony of L. Hicks Taylor.)

ord show our continuing objection to all these questions without having to raise it each time on the same ground? It is improper cross-examination and irrelevant and immaterial.

The Court: Are you addressing your objection to these specific items in these several exhibits?

Mr. LeSourd: To this line of questioning on these items back in 1933.

The Court: The record may show the objection without being specifically made. [4136]

Mr. Griffin: Yes, your Honor. Back to the question:

Q. (By Mr. Griffin): As to cash and notes receivable, those two items in your comparative statement are identical, aren't they?

A. That is correct.

Q. Your third item in Exhibit A-92 for the year 1943 is accounts receivable, $20,444?

A. That is correct.

Q. The accounts receivable item in Exhibit A-93 is what?

A. It is $5,426.00 and $12,934.96 on a schedule that is completely foreign from this. They are not comparative in any way. You cannot compare this statement with that statement, because they are not made out similar, and you must have statements of a similar nature to check back and forth.

Q. I thought——

A. (Interposing) No, they are not the same. This is a balance sheet. This is a comparative figure. There may be adjustment.

(Testimony of L. Hicks Taylor.)

Q. By that——

A. (Interposing) I mean that the two cannot be compared. You must have this same type of a statement in [4137] both periods to compare them.

Q. A-93——

A. (Interposing) That was a comparative statement. This is not. This is a straight balance sheet with all the accumulated accounts receivable shown in one item.

Q. You supplied Exhibit A-93 to Hans Forster so that he could compare the balance sheet of 1933 with the balance sheet of 1934, didn't you?

A. Mr. Griffin, you have heard testimony here of Mr. Beadon Hall, have you not, and this was prepared at the special request of Mr. Beadon Hall for the bank at Issaquah.

Q. Delivered to Mr. Forster?

The Court: When you say "this," you are speaking of which one?

The Witness: You have on Exhibit A-93 there what we call a comparative balance sheet showing the increase and decrease of assets during the year at the closing of the year. Here we have just the balance sheet that shows a total of all accounts receivable. It is not the same form at all, the two.

Q. (By Mr. Griffin): Mr. Taylor, A-93 is a comparative balance sheet of Issaquah Creamery Company, headed by you, [4138] "Comparative Balance Sheet, as between January 1, 1934 and December 31, 1934," isn't it? A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. The first item on that sheet of current assets is the same identical item as on A-92, cash, and the amount you have testified to, isn't it?

A. Yes, it agrees.

Q. And the second is notes receivable, and the amounts you have testified to, isn't it?

A. Yes.

Mr. Moriarty: Object to the form of the question as argumentative, if the Court please.

Mr. LeSourd: Also, your Honor, I will object.

The Court: Objection overruled.

Q. (By Mr. Griffin): And the third item, Mr. Taylor, in these two sheets are accounts receivable, aren't they?

A. There are two items of accounts receivable.

Q. You would combine them for accounts receivable, could you not?

A. There could be another account in another place that is an accounts receivable to make a comparative statement. This is an analysis of what we call accounts receivable. This is a breakdown to show increase. They are two distinct and separate statements that tell a [4139] different story.

Q. And it was a separate and different story through all these years in these statements that you were making that you were telling Hans Forster, wasn't it?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Griffin continuing): I go back to my question, sir, under your answer:

The accounts receivable for December 31, 1933, were $20,444 as you have written it, is that correct, still?

A. That is the accumulation of the accounts receivable at the end of that year.

Q. In the comparative statement, you put down accounts receivable approximately two thousand dollars less, don't you?

A. No, there is no disagreement in the accounts receivable. If the work sheets were here, I could show you.

Q. Now, whether you had work sheets or not, before you, would you say that for the year ending 1933 you show warrants $4,767.01?

A. Sure, it is there.

Q. And for the same identical date on your [4140] comparative statements, you show these same identical warrants, $3,767.01, don't you?

A. Sure.

Q. Why the discrepancy between city warrants or county warrants for the same date?

A. Mister, when you have figures to work out for comparative purposes, many times you shift figures out of one account to another to determine some information you want, and that was what apparently has been done, but I cannot tell you without the records to check it back. I don't remember from 1933 whether he had two dollars or ten dollars.

(Testimony of L. Hicks Taylor.)

Q. Isn't the purpose of a set of books and of accounting not to get something that you want, but to get the facts?

Mr. LeSourd: Objected to as argumentative.

Mr. Griffin: Well——

A. Apparently, Mister——

Mr. LeSourd: Just a moment. Was there a ruling?

The Court: No, I didn't rule. It would appear to me that the question is argumentative and immaterial, is it not?

Q. (By Mr. Griffin): What is the purpose of a set of books kept by [4141] a firm or an individual?

A. To determine their condition at all times.

Q. And among other things, so that they can make a true determination of income and tax payable to the United States Government, isn't it?

A. Providing all people cooperate in the development of those books.

Q. And you have suggested a moment ago in your answer that perhaps this was done to get something that you wanted in regard to this difference in warrants.

Mr. LeSourd: Objection.

Q. (By Mr. Griffin continuing): What could you want for Hans Forster except the actual facts?

Mr. LeSourd: Object to the form of the question; an assumption of facts and argumentative.

The Court: I believe he is referring back to an answer given in explanation.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Yes, sir.

The Court: You may answer.

A. We were trying to analyze our figures for Mr. Beadon Hall.

Q. (By Mr. Griffin): The accounts payable—I suggest this first: [4142]

Mr. Moriarty: Referring to what exhibit, Mr. Griffin?

Mr. Griffin: I withdraw that question, and I am starting over.

Mr. Moriarty: What exhibit are you holding so that we will know?

Q. (By Mr. Griffin): In A-92, Mr. Taylor, Accounts Payable as prepared by you for December 31, 1933, are $25,278.32, are they not?

A. On this particular report on Exhibit A-92, yes.

Q. And on A-93, and I understand now you say that you prepared A-93 for a banker, is that right?

A. At his request, yes.

Q. Instead of your showing the accounts payable by Issaquah Creamery Company at $25,278.32, you showed accounts payable only of $9,546.55, didn't you?

A. Mr. Griffin, did you——

Q. (Interposing) Is that what you show?

A. I am referring to this statement. It shows accounts payable $9,546.55, milk drafts payable, $7,045.61, and it shows other accounts, other contracts, that are all shown on this accounts payable to make them [4143] $25,000.

(Testimony of L. Hicks Taylor.)

Q. Are you sure of that, are you?

A. They are in there. This was made from the books, and the ledger, and they will prove out, and if he will bring the books and ledger here, we will prove them out for you.

Q. From the books?

A. And the ledger and work sheets can be proven, every point of it.

Q. What books did you use other than your ledger?

A. I used the ledger in preparing that, yes.

Q. Did you deliver a copy of Exhibit A-93 to Mr. Forster, this comparative balance sheet?

A. It was delivered to him, and Mr. Forster and I discussed it with Mr. Beadon Hall.

Q. For the purpose of a loan, was it?

A. It was for the purpose of financing Mr. Forster through that critical period as Mr. Beadon Hall referred to.

Q. Would that account in part for the fact that the one statement delivered to the Bank, the accounts payable were $9,546.55 and on the same date, you show accounts payable $25,278.32?

Mr. LeSourd: Your Honor, I will object to this. The witness read from this exhibit a number of other [4144] accounts payable. One of these exhibits are broken down into separate items, and in the other, they are in a lump sum and with Counsel's presentation, it is asking an improper question or making an assumption improper to the exhibit.

The Court: Well, the Court will discontinue for

the day, and will reserve the question and the ruling.

Ladies and Gentlemen of the Jury:

We will now recess until Tuesday, at ten o'clock. The Court calls your attention again to the admonition given you on the occasion of the week-end recess, and you are to be cautious not to confer among yourselves or with anyone on the outside regarding any matters that may relate to the merits of this case, and be cautious you do not read news accounts or listen to newscasts that may relate to this case or any matters involved therein. So that, if you will, bear that caution in mind. Be cautious likewise not to make any conclusions or arrive at any conclusions in regard to the merits of this case until it is finally submitted to you for your verdict.

You will now be excused until Tuesday at ten o'clock.

(Whereupon, the Jury retired from the courtroom.) [4145]

The Court: It is stipulated the Jury have left the courtroom?

Mr. Griffin: Yes, your Honor.

The Court: On this line of questioning, on Monday—or Tuesday, rather, if Counsel wish to state the purpose. I take it, ordinarily, in this type of examination, the Court would not ask Counsel to state the purpose. We have gone a long ways here, and there is some indication it may be subject to some statement or purpose.

Mr. Griffin: Yes, your Honor.

The Court: And so, when we take up again, we will go into that.

Mr. LeSourd: May I say to the Court that this entire matter of going into these completely irrelevant things, and particularly with the manner of questioning, if the manner of questioning, which I think is highly prejudicial, were done by the United States Attorney, I think it would clearly subject this case to a mis-trial, and since Mr. Griffin is in effect prosecuting this defendant, I am going to take the position that it is just as if the United States Attorney were going into this line of questioning, and I am going to move for a mis-trial, your Honor, if it persists.

Mr. Moriarty: We refuse to accept the nomination. [4146-47]

* * * * *

The Court: Mr. Griffin, do you have a matter?

Mr. Griffin: Your Honor desired me to make a statement as to the purpose of this line of exhibits.

The Court: Particularly, I had in mind the purpose of not the exhibits, but particularly the line of examination with relation to the particular figures that were gone into apart from the drawing account. That was the only matter.

Mr. Griffin: The purpose of that, the materiality of it and purpose of it, which will become quite evident as I proceed, if permitted so to do, is this: notwithstanding the statement of Counsel as to my cross-examination of Mr. Taylor as to a matter of guilt, while my personal view is of no importance, I have no thought that Mr. Taylor was in reality consciously cognizant of what he was doing, or that he was consciously endeavoring to assist in evading

income taxes insofar as Mr. Forster was concerned, but the things that he did reached that result, and our defense in this case, of course, is the reliance upon Mr. Taylor, and that the faulty bookkeeping on his part caused this situation. Now, then: these statements that I am using meet this situation. They show precisely [4156] what Taylor did. They show, as we proceed, how he did it and not as stated by him. They show on their face the pattern of the accounting that he rendered to Mr. Forster, and they show on their face, the inconsistencies between one month and another, in one year, and the later year.

They show on their face, other inconsistencies between the same statements for the same month, and the same year-end statements supplied to Mr. Forster in the very statements themselves, and that is why I am going into those figures. They were apparently picked out of the air.

For example: Take cash. Two statements for the same period. One will show a substantial plus cash, and the other, minus cash—overdrafts.

I am using those, without going into further detail, unless you want me to.

The Court: No.

Mr. Griffin: To how just what he was doing and what he gave Forster, and I propose to argue eventually from that, and if Forster had been—had known anything about accounting, this thing would have been picked up years before, because in the Indictment period, we have the same situation; no conversation because the pattern was laid before,

and it just took [4157] its natural course. That is the purpose of it. It will not be too long. It will take about a period to go through the rest of these down to the ones in evidence.

The Court: Mr. LeSourd?

Mr. LeSourd: If the Court please, I would like to take a moment to outline what we feel are the issues in the case, and what we feel is the permissible scope of evidence, relevant evidence, in this case, and particularly under direct examination.

It seems to me that this case comes down to some very easily definable issues. The evidence of the Government shows in the first place, receipts in substantial number, both checks and cash, which came into Issaquah and were not recorded on the books and were put in a savings account.

Now, that is one sharply defined issue in the case.

Another one are personal expenditures by Mr. Forster paid by business checks and charged to business expense. There is another sharply defined issue in this case.

Then, in addition, there are several issues involving subsidiary companies—the Renton Ice salary payments,—there is the Finstad and Utgard transaction [4158] involving payments to Mrs. Finstad, and there is the Simonson and Forster $100 checks in 1948 and 1949.

Those are sharply defined issues, and in reality, that is what the case is all about. That is what the Government's case comes down to.

We have put Mr. Taylor on the stand, and he has testified on each of those direct issues, but here,

we are going into a matter of figures for other years, and in Mr. Goran's testimony, Mr. Griffin went into the matter of all sorts of accounting figures, both monthly as well as year-end, in the period covered by the Indictment, all of which your Honor has nothing to do with the direct issues in the case, and if we try to compare back in 1933 one statement with another, that is twenty years ago. There may have been a myriad of adjustments that would cause the difference in two different statements reflecting a situation as of that period, and if we are required to try to resurrect all sorts of accounting adjustments not in this issue whatsoever, and in reality have no direct bearing on who was responsible for not putting these receipts in the books, we may be here some time on it, and I don't like to continually object to the evidence going in, your Honor. It is not something that is good for my position before the Jury, but I feel the thing has gone to such a [4159] wide scope that it is entirely improper, either as cross-examination of as relevant to the case as a whole.

The Court: Well, as I have indicated before, and I believe, as all Counsel realize, the issue in this case, as it will go to the Jury, is essentially one of knowledge and intent on the part of the Defendants.

The failure to pay tax, the fact that there was an amount due, that was not paid, you might say, is conceded. I don't think there is any question about that. The issue now then is: Did these Defendants individually, Mr. Forster, Mr. Taylor and

Mr. Erickson, have knowledge, or should have knowledge?

Mr. LeSourd: Your Honor, they can't be convicted just for "should have knowledge."

The Court: Have intent.

Mr. LeSourd: Yes.

The Court: So that, therefore, all this is going in on that issue, and, of course, there is a limit to the extent which the Court should permit either direct or cross-examination with respect to that issue.

It has been my belief, in ruling on these exhibits and on certain questions as they are put, that in connection with Mr. Taylor's cross-examination that he, [4160] having testified, and the record having shown that he represented these companies as an accountant, or in some capacity with the books, and as an officer from 1928 on, that some examination is permissible covering that.

Now, the problem that was bothering me at the close on Friday was not the general showing, but the specific items when they came to accounts payable or accounts receivable, I believe, as they were covered.

When the issue of knowledge and intent is so important in this case, I feel that the Court must go farther than might otherwise be advisable, particularly in view of the position of the Defendant in this case. Therefore, I have permitted and ruled on evidence as it has been offered, with that thought in mind. I have stated my position generally, and I don't know that I can make any further statement,

and Counsel will have to proceed as they see fit as we go ahead.

I don't know, is there any further question Counsel wishes to put as to the Court's view, admitting that you do not agree with it, perhaps—conceding that?

Mr. Moriarty: I think, if the Court please, [4161] there should be some limitation on these isolated instances of the Excise Tax Returns, and other things that Mr. Taylor may have signed in the past as Auditor in view of Mr. LeSourd's stipulation.

The Court: I think I have ruled on a number of those.

Mr. Griffin: I am sufficiently satisfied with the auditor ruling of the Court, and I do not intend to make any offer of proof in that particular, except that the usual exceptions to the refusal of the documents is all, because I think it is covered. [4162]

* * * * *

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination

The Court: I believe the record shows a question and objection. Do you wish to strike that, Mr. Griffin, and restate it?

Mr. Griffin: Yes, I will drop that particular one, and proceed with another exhibit, if the Court please.

(Testimony of L. Hicks Taylor.)

Will you mark that?

The Clerk: Defendants' Exhibit A-94 marked for identification.

(Defendants' Exhibit No. A-94 marked for identification.)

Q. (By Mr. Griffin): Mr. Taylor, did you prepare these balance sheets, profit and loss statements, for Mr. Forster or Issaquah Creamery with any more care when you were delivering same to a bank than you did when delivering to Mr. Forster only?

A. May I look at that work sheet, please?

Q. I am just asking the general question at the present time. [4165]

A. The care was the same at all times.

Q. Thank you; handing you Exhibit A-94 for identification, I will ask you if this is the balance sheet, profit and loss, and so on, for November, 1935?

Mr. LeSourd: What organization, Mr. Griffin?

Mr. Griffin: Issaquah Creamery.

A. Yes, I prepared those.

Q. (By Mr. Griffin): And is this your writing: "Given to Issaquah State Bank, December 30, 1935"? A. That is correct.

Mr. Griffin: A-65 and A-66, please.

(Whereupon, exhibits were handed to Mr. Griffin by the Clerk.)

Mr. LeSourd: If your Honor please, we make the same objection, that it is completely irrelevant and immaterial and improper cross-examination.

Here is a month-end statement back in 1935.

The Court: Objection overruled.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-94 admitted in evidence.)

The Court: (Continuing) I believe at this time I will advise the Jury that in connection with certain testimony that is now coming in, certain [4166] exhibits, these are not to be considered by the Jury as having any bearing on the issue of tax evasion in the—insofar as tax is involved in the years involved, namely for the years 1945 to 1949, inclusive. They are to be considered, if they have any bearing, if the Jury so finds, insofar as it may relate to knowledge and intent of the parties insofar as the circumstances of the transactions covered by the evidence may have some relationship upon knowledge and intent for the years involved. Whether they do or not is a matter for the Jury to determine.

Mr. LeSourd: If the Court please, I wish the record to show our objection to the statement of the Court in implying that there could conceivably be any relationship in these documents to knowledge and intent in the years here involved whatsoever. We feel it is improper and we wish the record clearly to show our objection to such a statement.

The Court: The Court will say for the record that if Counsel believes the Court has misstated the law and wishes to submit what he conceives to be the proper statement of the law you may submit the instruction and the Court will consider it.

The Court does not indicate that these [4167] matters do have any—necessarily have any—bear-

(Testimony of L. Hicks Taylor.)

ing, but they may have, in determining what the circumstances were, what the practices were in the yearly years, as between Mr. Taylor and Mr. Forster, and his companies. They may establish, if you so find, a course of transactions or accounting procedures or relationships that in some way may have a bearing on the issue of intent or knowledge.

I don't want you to think that the Court's comment on that is in any way binding upon you as to what your finding shall be from the evidence. I merely advise you so that it may be of some help to you in understanding why it is being permitted.

Mr. LeSourd: I wish the record to show our objection to the further remark on the same grounds.

The Court: The record may so show.

Q. (By Mr. Griffin): Exhibit A-94, Mr. Taylor, you prepared this and made the memorandum that you delivered it to the Issaquah State Bank, December 30, 1935?

A. That is the notation made at the top of this form, yes.

Q. That includes balance sheets and profit and loss statements, that exhibit, doesn't it? [4168]

A. It does not.

Q. Excuse me. This is your typewriting at the head, is it not? A. It is.

Q. Issaquah Creamery Company, Incorporated, balance sheet, November 30, 1935?

A. That means just what it says.

Q. That is not a balance sheet?

(Testimony of L. Hicks Taylor.)

A. That is a balance sheet, and that was what was delivered.

Q. My question was, it included balance sheets and profit and loss?

A. I said it did not. I did not deliver any profit and loss sheet. This was the only sheet delivered to Mr. Hall.

Q. I see, you did not deliver the rest of it?

A. I did not.

Q. I misunderstood you.

I am sorry. The exhibit, however, includes the profit and loss statement for November 30, 1935, does it not?

A. This is the monthly work sheet, yes.

Q. And also includes with profit—a separate profit and loss statement for November 30, 1935, with a complete breakdown of every item of merchandise, doesn't [4169] it?

A. Yes, this is quite a complete statement.

Q. Yes, quite a complete statement?

A. Yes.

Mr. Griffin: And so the Jury will know what I am referring to on that breakdown is the sales of butter, cheese, condensed, curd, sweet cream, raw skim, ice cream, bottle milk, commercial cream, whip, bars, casein, pot, miscellaneous.

Q. (By Mr. Griffin): That is correct, isn't it?

A. That was prepared by the office at Issaquah for me, and I copied it on there.

Q. You just copied it? A. That is right.

(Testimony of L. Hicks Taylor.)

Q. And in this exhibit, the Hans Forster account is $22,930.41, is that right?

A. That is what it displays, yes.

Q. The month of November was generally a losing, or loss month, in this business, was it not?

A. Not always.

Q. Was the month of November a good month profitwise in the Creamery business?

A. It is not a banner month, but it didn't always lose money. [4170]

Q. Exhibit A-94, what was the situation for the month of November 30, 1935, as shown by you—by that exhibit?

A. In that month, being in 1935, the sales were only $28,000 and they lost $416 that month.

Q. What is this item, net loss, for the period?

A. The accumulated sales were $150,000 and the net loss shows. The net loss shows $3,095.44 for the eleven months.

Q. Mr. Taylor, I noticed in reading what was a typewritten figure, you looked at some figures on the work sheet. Do you have to consider the work sheet in connection with the statements to be able to read them?

A. Not necessarily. This is a little bit blurred. The carbon was blurred, so I looked over here to verify the figure.

Q. Will you put a cross at that $3,095.44 that you say was blurred, if you will, please?

A. These two figures here.

Q. Thank you.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Will you mark this December 31, 1935, for identification, please?

The Clerk: Defendants' Exhibit A-95 marked for identification. [4171]

(Defendants' Exhibit A-95 marked for identification.)

Q. (By Mr. Griffin continuing): Mr. Taylor, handing you Exhibit A-95 for identification, I will ask you what that is?

A. This is the work sheet from the Issaquah Creamery Company covering a number of little memorandums showing a profit and loss for the year ending December 31, 1935.

Q. Is this your writing on the front, First National Bank of Stanwood?

A. That is right.

Q. Do I understand that these statements at the end of each month, and at the end of each year, with the exception of the work sheets—that is the printed matter—went to Mr. Forster from you?

A. The typed portions usually went to Mr. Forster, yes.

Mr. LeSourd: We will make the same objection, your Honor, to A-95 as to the previous one.

The Court: Any objection from the Government?

No objection?

Mr. Moriarty: No objection.

The Court: The objection may show, and the Court will overrule the objection. [4172]

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-95 admitted in evidence.)

Q. (By Mr. Griffin): Mr. Taylor, A-95, a balance sheet, Issaquah Creamery Company, December 31, 1935, profit and loss statement, December 31, 1935, profit previous years, and profit and loss statement again December 31, 1935, for the month of December, I take it—is that right?

A. That is not. That is for the year.

Q. That is, it is a duplicate again?

A. There are three copies there.

Q. All right; Mr. Taylor, I hand you Exhibit A-92, and what does A-92 show the profit to have been for the year 1933—the net profit?

A. $2,019.40.

Q. Give me that figure again, will you, please?

A. $2,019.40.

Q. Mr. Taylor, the statement that you gave Mr. Forster, Exhibit A-95, shows a profit for the year 1933 to be $12,697.27, doesn't it?

A. Yes. Would you like that explained?

Q. I would. A. All right.

We were dealing with Bankers who wanted to loan money, and Mr. Forster had not withdrawn sixty-nine [4173] hundred dollars of his salary. The depreciation schedule was taken—I am, right now I am assuming that is the figure. We reduced the depreciation $3,777.87, making a total of $10,677.87, plus $2,019.40 makes a profit of—undrawn from the business of $12,697.27 that was made for the benefit of the bankers.

(Testimony of L. Hicks Taylor.)

Q. Did you have any idea that the books should be kept accurately?

Mr. LeSourd: Object to the form of the question. A. Apparently——

Mr. LeSourd: Just a moment, Mr. Taylor. I object to the form of that question.

The Court: Objection overruled.

Q. (By Mr. Griffin): Did you have any idea that the books of Mr. Forster should be kept accurately?

A. Mr. Griffin, those books were kept accurately. This was done for a specific and definite purpose.

Q. To deceive the bank?

A. It was not done to deceive the bank. The bank was not deceived one iota.

Q. I hand you, Mr. Taylor, Exhibit A-93, and ask you what your statement there shows the profit to [4174] have been for the year 1934?

A. It showed a net loss of $1.73.

Q. A net loss? A. Right.

Q. And, A-95, you show a profit for the year 1934 of $11,469.30, don't you?

A. The exact same process was done again. We added back sixty-nine hundred dollars of undrawn salary of Mr. Forster, and we also reduced our depreciation to a smaller, or maybe a more fair, value, to $4,569.30, and established a profit of $11,469.30, which is not an untrue statement.

Q. Mr. Taylor, I hand you Defendants' Exhibit A-65, which is in evidence only for the figures "5" in there.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Just a moment. A-65?

Mr. Griffin: Yes.

Q. (By Mr. Griffin continuing): I ask you if this is another of your statements for December 31, 1935, Issaquah State Bank—Mr. Forster?

Mr. LeSourd: I will object to questions on this, your Honor, until and unless the exhibit is admitted generally.

Mr. Griffin: I am just identifying it. [4175]

The Court: Mr. Griffin?

Mr. Griffin: I am identifying it.

Mr. LeSourd: I think it has been identified, but for merely identification, I have no objection.

A. Yes, I prepared that.

Q. (By Mr. Griffin): And is this your writing on there, Peoples Bank and Trust Company, December 31, 1935?

A. I believe you will find notations of that type whenever I prepared statements and they were delivered to the banks for my information.

Q. That is your writing?

A. That is for my information, yes, and my writing.

Mr. Griffin: I offer now A-65 in full, if the Court please.

Q. (By Mr. Griffin): Did you manipulate——

Mr. LeSourd: (Interposing) Just a moment. Do you offer it?

Mr. Griffin: Yes.

Mr. LeSourd: We make the same objection.

The Court: The same objection may show as to

(Testimony of L. Hicks Taylor.)

the preceding exhibits, A-94 and A-95. I believe they are all similar exhibits offered, and the objection [4176] is overruled.

(Defendants' Exhibit No. A-65 admitted in evidence.)

Q. (By Mr. Griffin): Mr. Taylor, did you manipulate figures in these balance sheets and profit and loss statements that you gave to Mr. Forster just as you saw fit?

Mr. LeSourd: Object to the form of the question.

Q. (By Mr. Griffin continuing): Did you manipulate the figures?

Mr. Griffin: I will stop there. It might be a double question.

A. Mr. Forster——

Mr. LeSourd: Just a moment.

The Court: You object to that, also?

Mr. LeSourd: I do, yes, sir.

The Court: Objection overruled.

A. (Continuing) Mr. Forster was in a very difficult position financially. The bankers wanted to work with him. The bank examiners would not accept minus figures. The bankers sat in on every change that was made. They weren't manipulations. They were changes that had a foundation and there [4177] was nothing irregular about them that anybody would be hurt in any way to give the bankers a chance to argue with the bank examiners that they could possibly loan Mr. Forster a few dollars.

Q. (By Mr. Griffin): I am handing you now, sir, Exhibit A-65 which is the statement for Decem-

(Testimony of L. Hicks Taylor.)

ber 31, 1935, delivered to the Peoples Bank and Trust Company, and A-95, the same precise date, to the First National Bank of Stanwood.

Looking at the Stanwood balance sheet, what do you show for sales?

A. The Stanwood Bank is A-95. The sales figures is shown at 480 thousand.

Q. $472.26? A. Yes, correct.

Q. And on the same identical date what do you show for sales in the one you delivered to the Peoples Bank?

A. The sales at the Peoples Bank have apparently had an adjustment made and they show $477,-961.54.

Q. Can you adjust cash the same way you adjust sales, or did you?

A. You can adjust cash as an explanatory account [4178] as well as you can any account on your ledger, unless you are carrying a petty cash account and that account must carry the exact cash on hand.

Q. On A-95, to Stanwood, what do you show cash on hand?

A. It shows an overdraft of $6,213.74.

Q. And what does it show on Peoples?

A. $2,187.03.

Q. The very same date the specific item of cash a difference of some $8,410.80; is that right?

A. You might be enlightened, Mr. Griffin, to find that on the Peoples Bank statement you will find down in the current liabilities a column account

(Testimony of L. Hicks Taylor.)

check reserve, not cashed through the bank, of $9,644.95; when you take $6213 plus and another item you have $2197.03 as cash on hand and that is what the bank statement at the bank has probably shown, I can not remember.

Q. The difference between the cash on hand that you show to the Peoples and to Stanwood and as you delivered to Mr. Forster on the very precise date, the difference in that cash is $8410.79, isn't it?

A. I haven't figured it. It probably is.

Q. There could be no actual difference in [4179] cash, could there, Mr. Taylor?

A. There is no difference in cash in these figures. They will check out.

Q. That is, a minus—an overdraft of $6,213.76 checks out with cash on hand $2,197.03; is that your statement?

A. Mr. Griffin, when any balance sheet balances your figures are never incorrect in that balance sheet. You may adjust them, suitable figures to suit certain occasions——

Q. (Interposing) Commonly——

A. (Continuing) ——and yet you have not misstated the sense of the balance sheet.

Q. Commonly called forcing a balance, is that it?

A. I wouldn't say forcing any balance. Those balances are in agreement.

Q. The balances are in agreement?

A. The balances are in agreement.

Q. Before I go to the divisional questions here,

(Testimony of L. Hicks Taylor.)

Mr. Taylor, and you say the balances are in agreement, what do you show on the Peoples statement as to net profit or loss?

Mr. Cox: For what period?

Mr. Griffin: This is December 31, 1935. [4180] I am using the precise date of each one.

A. I showed a loss on the Peoples Bank of $1,369.37, which was the same adjustment that I explained a few minutes ago.

Q. (By Mr. Griffin): You showed a loss, a net loss, for the period of $1,369.37, didn't you?

A. That is correct.

Q. And on the Stanwood you showed profit, net profit, of $13,732.75, didn't you?

A. I believe that I very carefully explained that a few minutes ago.

Q. Will you answer the question, please?

That is what it shows, isn't it, profit to Stanwood $13,732.75?

A. As I adjusted it, yes, and explained it a while ago.

Q. You just stated that they balanced. They don't balance against each other, do they?

The Stanwood statement of December 31, 1935, and the Peoples Bank statement of December 31, 1935?

A. They are two distinct statements for a purpose.

Q. Was one purpose to be able to show [4181] that Issaquah Creamery Company was operating at a loss for the purpose of borrowing money?

(Testimony of L. Hicks Taylor.)

A. We were not borrowing at the Peoples Bank.

Q. Mr. Taylor, which of those statements before you, the statement of the Peoples Bank or to the Stanwood Bank, is correct?

A. They are both correct for the purpose in which they were prepared for.

Q. Is a balance sheet prepared by you, as prepared by you, to state the actual factual condition, or is it not?

A. These are factual conditions.

Q. Upon which of those two statements could Mr. Forster rely as to whether he had made a profit or whether he was operating at a loss?

A. Mr. Forster rode on these statements continuously because he wanted to borrow money.

Q. You were not borrowing money at the Peoples, you said.

A. You were borrowing at Stanwood, My Good Friend.

Q. Were you borrowing at Peoples?

A. We were not as I remember it at that time.

Q. Actually, Mr. Taylor, no matter what your purpose was, factually the accounts receivable and the accounts payable in each instance factually had to be the same, didn't they?

A. They had to balance with each statement given.

Q. Do I understand then that you, having put out two statements of December 31, 1935, neither of which agrees with each other either as to profit or loss, is it your theory that you could put out ten

(Testimony of L. Hicks Taylor.)

statements; as long as each one balanced separately they are all right?

A. You can—if you alter figures or make an amended balance sheet for a purpose and it is thoroughly explained nobody is harmed by it.

Q. My question still is: Well, put it this way:

Upon which of those balance sheets could Mr. Forster rely as to whether he had made a profit under your accounting system as given him, or whether he had operated at a loss?

A. Mr. Forster was drawing a salary of two thousand dollars a month and he was not drawing it all. He was allowing some of it to remain in the business. The bankers liked to loan money [4183] where they can; they like to hold accounts in the small towns. This theory was worked out more by the bankers than it was by me to hold Mr. Forster's account in the Issaquah State Bank.

The First National Bank of Stanwood was owned by Beadon Hall's brother and if Mr. Forster had to take one of his chattel mortgages out of the Issaquah Bank and move it to Seattle, Seattle would demand all their loans. This is a combination between Beadon Hall and Bud Hall, his brother, who operated the two banks.

Q. Then do I understand you were not making and supplying Mr. Forster with these balance sheets and year-end statements so he could know how his business was going but you were supplying them to the bankers as the bankers suggested?

A. Mr. Forster had a true copy of the profit and

(Testimony of L. Hicks Taylor.)

loss statement displaying his full salary. He knew what the condition was.

Q. A profit and loss statement displaying his full salary, you say? A. That is correct.

Q. Will you show it on there? Show me where.

A. Will you give me the schedule that [4184] has all the work sheet papers on it, please?

Q. Just a moment. What salary do you show to Mr. Forster, by the way, upon the statements to the Peoples Bank? A. $10,500.00.

Q. And what to the Stanwood Bank?

A. $3600.00.

Q. And you were not only the accountant but the secretary of this corporation making that showing, is that right?

A. That is exactly what Mr. Forster drew from this company that year.

Q. Which? A. $3600.00.

Q. Not $10,500.00?

A. No; he was voted $10,500.00.

Q. I thought you just testified he was drawing two thousand dollars a month?

A. I was in error, when I get back to 1934; I am sorry.

Q. Did Mr. Beadon Hall advise you that he wanted for his bank a false statement of the assets and liabilities, profit and loss, of Issaquah Creamery?

Mr. LeSourd: If your Honor please, I haven't objected all through here. I didn't want to [4185] encumber the thing he is talking about. I would

(Testimony of L. Hicks Taylor.)

like, your Honor, to have a standing objection to all this testimony back in this period, whether details of these financial statements or otherwise, as being utterly irrelevant and immaterial and improper cross-examination, so that I will not have to interrupt.

Mr. Griffin: I understand.

The Court: You may have such an objection, Mr. LeSourd.

Mr. LeSourd: Thank you.

The Court: And the record may show, I gather now, that you believe all this testimony is immaterial and irrelevant and, therefore, want the objection to go to all of it.

Mr. LeSourd: Yes; improper cross-examination.

Q. (By Mr. Griffin continuing): Now, back——

The Court: (Interposing) That doesn't cover form.

Mr. LeSourd: Pardon?

The Court: Your objection covers everything except objection as to form.

Mr. LeSourd: That is right.

The Court: Objection overruled. You may answer. [4186]

Q. (By Mr. Griffin continuing): The question was:

Did Mr. Beadon Hall ever request you to make a false statement of assets and liabilities, profit and loss, of Issaquah Creamery Company?

Mr. LeSourd: I should object to that on the ground of form also. The testimony here shows the

(Testimony of L. Hicks Taylor.)

statements were not false and it assumes a fact contrary to the testimony.

The Court: As I understand the question, that is what the question is, or asks.

Mr. Griffin: Yes, sir.

The Court: Objection overruled.

A. There wasn't any figures given Mr. Hall that were false.

Q. (By Mr. Griffin): My question was: Did Mr. Beadon Hall ever ask you to make a false statement—profit and loss—balance sheet—assets—Issaquah Creamery Company?

A. None was ever given him.

Q. Would you—do you object to answering the question, Mr. Taylor? It can be answered "yes" or "no." [4187]

A. I can't remember anything about it.

Mr. Griffin: Now, will you mark this?

The Clerk: Defendants' Exhibit Number A-96 marked for identification.

(Defendants' Exhibit A-96 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-96, for identification, I will ask you if this is the balance sheet, profit and loss, assets, Issaquah Creamery, December 31, 1936?

(Whereupon, there was a brief pause.)

A. Yes; that is the work sheet.

Q. You have used the term "work sheet." What do you mean by that?

(Testimony of L. Hicks Taylor.)

A. That is my private papers that belong in my private files.

Q. By the "work sheet," you are referring to the yellow copies?

A. I am referring to what you have in your hand. Those are part of my private files.

Q. These—the particular one I hold in my hand, A-96, you delivered personally to the Issaquah Creamery just before you went to McNeil Island, didn't you? [4188]

A. They were still my property.

Q. Will you please answer the question?

A. I delivered them there as my property; yes.

Q. One could not read—you also delivered the ledgers there that you maintained, didn't you?

A. That is correct.

Q. And the work sheets were necessary even in your own interpretation of the ledgers, weren't they?

A. They had a bearing on the finals, yes.

Q. And because you were going to be away and you knew that Mr. Forster was being investigated you left the work sheets there with the ledgers so that they could be examined and inspected, didn't you?

A. Mr. Forster had not been questioned or placed under examination at the time those were delivered there.

Q. When did you deliver them there?

A. My recollection is along about the 11th of April.

(Testimony of L. Hicks Taylor.)

Q. Of 1950? A. That is correct.

Q. What was your purpose in leaving them there? [4189]

A. Because if there was an examination I was only about fourteen or fifteen miles away, my trusted attorney could have contacted me to discuss how those files were and how they could have been followed out. Mr. Kachlein made no effort to contact me to go into those files. Mr. Marx could have picked those books and work sheets out and started work on them within fifteen minutes after it was explained how to proceed.

Q. My question was: Why did you leave them at the Issaquah Creamery, Mr. Taylor?

A. For my own information and for Mr. Forster's information.

Q. Very well.

Mr. Griffin: A-96, I am offering this.

Q. (By Mr. Griffin continuing): I think you said, Mr. Taylor, that when the split-off came between Alpine and Issaquah Creamery Company it required a good deal more work on your part; is that right?

A. It required the keeping of two ledgers and keeping of two journals, yes.

Q. You were breaking down separately the Seattle business from the Issaquah Creamery business prior to that break-off, weren't you? [4190]

A. Yes, there was some distribution.

Q. And that distribution is shown on the December 31st——

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Pardon me. This was offered. I am sorry.

Mr. LeSourd: We make the same objection.

The Court: To A-96?

Mr. LeSourd: Yes.

The Court: It may be noted and the objection will be overruled and A-96 may be admitted.

(Defendants' Exhibit A-96 admitted in evidence.)

Q. (By Mr. Griffin continuing): And as of December 31, 1936, the profit and loss as between Issaquah and what later became Alpine is stated separately, isn't it, in detail?

A. Just the genuine regular profit and loss statement was prepared, yes.

Q. Separately for each? A. Sure.

Mr. Griffin: It is recess time.

The Court: Ladies and Gentlemen of the Jury: We [4191] will now take the mid-morning recess. The Court calls your attention to the admonition given you on similar occasions and asks that you heed the admonition given you on this occasion. You may now be excused.

(Whereupon, the jury retired from the court room.)

(Whereupon, at 11:02 o'clock, a.m., a recess was had until 11:17 o'clock, a.m., April 20, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Testimony of L. Hicks Taylor.)

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Taylor, with reference to Exhibits A-65 and A-95, one to the Peoples Bank and Trust Company and the other to the First National Bank of Stanwood, one [4192] stating a net loss and another a net profit, which of those balance sheets and profit and loss statements did you use for the income tax of Issaquah Creamery for the year 1935?

A. As I recollect, we used the book figures that showed.

Q. You used the book figures that showed?

A. Yes.

Q. The book figures that showed where?

A. They showed a loss.

Q. They showed a loss? A. Yes.

Q. Although there was a profit, is that correct?

A. Mr. Griffin, the purpose of this statement was to try to keep Mr. Forster remaining in business. His position was very precarious whether the Issaquah Creamery would exist or not. The bankers were trying to be generous, to some extent, and knew that this business would not carry normally Mr. Forster's salary. They knew we were

(Testimony of L. Hicks Taylor.)

taking the Federal Schedule of Depreciation. A small operation must keep its equipment up. Probably the depreciation might have been a trifle high. The value was probably greater. The purpose of these statements was to give the bankers merely a true value of the equipment and of the condition that existed at the time [4193] and Mr. Forster sat in and saw and worked with me when we worked out these statements, so that there was nothing concealed from anybody. It was done for a purpose, to keep this man at Issaquah operating, employing a few people. Nobody had been damaged by this.

In fact, the town of Issaquah has benefited by the rearrangement of these figures to make Mr. Forster's Issaquah Creamery Company appear in a little better financial condition.

Q. You don't think Mr. Forster has been harmed?

A. Not by these, he wasn't harmed one iota.

Q. If accurate statements of income had been made to the United States Government—change that.

You knew that if inaccurate statements were made to the United States Government on income and on profit, Mr. Forster would be harmed; didn't you? A. I knew that. So did he.

Q. And, notwithstanding that, you made these returns?

A. These returns were audited by the Internal Revenue, I believe, clear up to 1939 and they didn't

(Testimony of L. Hicks Taylor.)

particularly question our thoughts on the thing.

Q. In Exhibit A-96, I notice you have real estate and so forth, $105,501.31 for Issaquah Creamery; is that correct? [4194]

A. That is what it shows here, yes.

Q. What was the value of the real estate that you had been carrying each year prior thereto, or what valuation, rather, had you carried?

A. Of course, that says "etc."; that could mean all the balance of the equipment, including the real estate.

Q. Do you know what valuation you had been carrying on real estate prior thereto?

A. As I recollect, it had been around $3200.

Q. $3200?

A. I will change that point. It showed at $5,382.38.

Q. And A-96, for December 31, 1936, shows a loss for the month of December, $847.40, is that right?

A. May I have it in my hand so that I can see it?

(Whereupon, Exhibit was handed to the witness by Mr. Griffin.)

A. (Continuing) Yes, it shows a loss of $847.40.

Mr. Griffin: Will you mark the August 31, 1937, balance sheet, please?

The Clerk: Defendants' Exhibit A-97 marked for identification.

(Defendants' Exhibit A-97 [4195] marked for identification.)

(Testimony of L. Hicks Taylor.)

Q. Handing you Exhibit A-97 for identification, I will ask you if this is the balance sheet, profit and loss, Issaquah Creamery, as of August 31, 1937?

A. Yes, that is quite complete.

Q. Detailed; correct?

A. Not detailed. It is quite complete, the report.

Mr. LeSourd: Mr. Taylor, this includes certain sheets which had been received by you, I take it, in addition to your work?

The Witness: May I look at it, Mr. LeSourd—so that I can speak intelligently on it.

(Whereupon, exhibit was handed to the witness by Mr. LeSourd.)

The Witness: (Continuing) This includes figures from the Alpine Dairy, the re-cap of Mrs. Wilcox included with these work papers.

Mr. LeSourd: And also adding machine tapes?

The Witness: Adding machine tapes are included, also.

Mr. LeSourd: We make the same objection, your Honor.

The Court: The objection may show. The exhibit may be admitted. [4196]

(Defendants' Exhibit No. A-97 admitted in evidence.)

Q. (By Mr. Griffin): Mr. Taylor, you referred to Exhibit A-97 when you were identifying it, as quite complete; is that correct? A. Yes.

Q. Had the real estate of Issaquah Creamery Company been sold between the report of December 31, 1936, and August 31, 1937?

(Testimony of L. Hicks Taylor.)

A. May I see the exhibit, please?

(Whereupon, exhibit was handed to the witness by Mr. Griffin.)

A. (Continuing) No, the real estate had not been sold.

Q. You didn't include it as an asset, did you?

A. Oh, I would say I did.

Q. Where?

A. Under the "Fixed Assets" of equipment.

Q. Excuse me; I read, Fixed Assets, Equipment, $104,629.54? A. That is correct.

Q. You included real estate under equipment, is that correct?

A. Yes, for this statement; yes. [4197]

Q. Why?

A. There is usually no increase or decrease in real estate, and we usually don't segregate it in that type of statement.

Q. Mr. Taylor, in every statement you made on the Issaquah Creamery prior to this statement of August 31, 1937, you segregated the real estate, didn't you?

A. Would that make any difference in the final figures?

Q. Mr. Taylor, I am——

A. (Interposing) That was made up for a certain purpose. From memory, I do not remember what the purpose of it was, but it is quite a complete statement made out for some special purpose.

Q. My question was, Mr. Taylor:

In every statement prior to this August 31, state-

(Testimony of L. Hicks Taylor.)

ment of 1937, you included and segregated the real estate as an asset, didn't you?

A. It is possible, yes.

Q. But this, because you say there was some special purpose you don't remember, you didn't do it; is that right? A. No.

Q. Is that correct?

A. That is correct. [4198]

Q. Well, Mr. Taylor, the year-end statement is not made for a special purpose except as the year-end statement, is it?

A. Sure, it is made for a special purpose.

Q. The same special purpose of each year-end statement? A. That is correct.

Mr. Griffin: Will you mark this statement of December 31, 1937, for identification, please?

The Clerk: Defendants' Exhibit A-98 marked for identification.

(Defendants' Exhibit A-98 marked for identification.)

Q. (By Mr. Griffin): The monthly statements were made, were they not, to advise Mr. Forster of his position financially? A. Certainly.

Q. Whether he was making money or losing money? A. That is correct.

Q. What he had, and what he owed?

A. He knew.

Q. What he had and what he owed?

A. And he knew.

Q. Mr. Taylor, were these statements made to

(Testimony of L. Hicks Taylor.)

Mr. Forster monthly, so that he would know what he possessed, [4199] and what he owed?

A. That is right, and he knew from those statements what he possessed, and what he owed.

Q. Handing you Exhibit A-98 for identification, I will ask you if this is the balance sheet for December 31, 1937, as prepared by you and delivered to Mr. Forster?

A. I would say that it was, yes.

Mr. LeSourd: Same objection, your Honor.

The Court: The objection may show. Objection overruled, and A-98 may be admitted.

(Defendants' Exhibit A-98 admitted in evidence.)

Q. (By Mr. Griffin): Mr. Taylor, on A-98, balance sheet, December 31, 1937, you show real estate, do you, as an asset? A. That is right.

Q. Issaquah Creamery owned at that time, the same real estate that it owned for years, did it not, and which you had theretofore included as an asset?

A. Mr. Forster knew it was included in the equipment account.

Q. Do I understand it didn't make any difference what you showed in the balance sheet, or profit and loss statement if Mr. Forster knew it already?

A. Mr. Forster went over these with me many times. [4200]

Mr. Griffin: Will you mark this balance sheet of December 31, 1938?

The Clerk: Defendants' Exhibit No. A-99 marked for identification.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit No. A-99 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-97 for identification——

The Clerk: (Interposing) A-99, Mr. Griffin.

Q. (By Mr. Griffin continuing): Pardon me; A-99, I will ask you if this is the balance sheet, December 31, 1938, Issaquah Creamery Company, which you delivered to Mr. Forster?

A. I would assume that he had a copy of this.

Q. Prepared by you?

A. That came from my private files, that particular copy.

Mr. LeSourd: Same objection, your Honor.

Mr. Moriarty: We have no objection.

The Court: The objection may show. The objection is overruled, and A-99 may be admitted.

(Defendants' Exhibit No. A-99 admitted in evidence.) [4201]

Q. (By Mr. Griffin): A-99 shows assets, real estate, $21,393.73, doesn't it?

A. Real estate shows $9,557.44.

Q. You are right. I got the wrong line.

That is the same real estate that was owned the previous year, wasn't it?

A. There was probably an addition. That was the reason I set it out separately.

Q. Was there an addition?

A. I do not remember that, but that is probably the reason for it.

(Testimony of L. Hicks Taylor.)

Mr. Moriarty: What year is that, Mr. Griffin?

Mr. Griffin: December 31, 1938.

Q. (By Mr. Griffin): Do you recall in this statement, Exhibit A-99, you included as an asset stock in Issaquah State Bank? A. Yes.

Q. And is it correct that you value your routes as an asset at $28,552.02? A. Yes.

Q. And in the December 31 statement of the previous year, you value those routes at $40,111.47, do you? [4202]

A. May I have the statement you have in your hand?

(Whereupon, document was handed the witness by Mr. Griffin.)

A. (Continuing) If you will notice, Mr. Griffin, that I have routes $28,552.02 and I have a caption Goodwill in Routes $12,500, which makes the figure, I believe.

Q. Do you believe that, you say?

A. I believed it, because Mr. Forster did.

Q. Mr. Forster did what?

A. He believed the routes were worth that. I never drove a route, so that I don't know.

Mr. Griffin: Will you mark this?

The Clerk: Defendants' Exhibit No. A-100 marked for identification.

(Defendants' Exhibit No. A-100 marked for identification.)

Mr. LeSourd: Same objection.

The Court: Is that a similar sheet?

Mr. Griffin: It is dated December 31, 1938.

(Testimony of L. Hicks Taylor.)

Mr. Moriarty: I thought 99 was '38.

Mr. Griffin: Correct; each one.

The Court: Is that A-100?

Mr. Griffin: A-100, yes, your Honor. [4203]

The Court: What is A-99?

That was the balance sheet alone?

Mr. Griffin: Balance sheet.

The Court: The objection may show, and the objection is overruled.

(Defendants' Exhibit A-100 admitted in evidence.)

Q. (By Mr. Griffin): Now, Mr. Taylor, you delivered A-99 to Mr. Forster, you say, and I hand you A-99 and A-100. In A-100, will you turn to your balance sheet, please?

In the one that you delivered to Mr. Forster, that balance sheet as of December 31, 1938, you show cash on hand $2,406.42, don't you? A. Yes.

Q. And in A-100, balance sheet, the same date, you show cash on hand $4,797.66, don't you?

A. May I ask where did this A-99—where did you recover it from?

Q. You will just answer my questions. That will be the interesting part, Mr. Taylor.

The Court: Mr. Taylor, the exhibit is in evidence now and the question has been put.

A. The figures have been rearranged to some extent on the statement made—this statement—to the one made [4204] in this work sheet, while the net result of the combined statement has not been changed. The purpose was to probably bring out

(Testimony of L. Hicks Taylor.)

some points here that aren't brought out on this work sheet. Many times that is done. I don't know what this was prepared for.

If I had some source of knowing what it was prepared for—of the particular purpose—I could explain it probably a little better.

I think it was for the bank. I am not sure.

Q. (By Mr. Griffin): My question, Mr. Taylor, is that the cash shown in Exhibit A-100 is $4,797.66, isn't it? A. That is correct.

Q. As opposed to $2,406.42, the one you delivered to Mr. Forster?

A. This would be the statement that was delivered to Mr. Forster, not this one.

Q. Do you want to change your testimony that that A-99 was not delivered to Mr. Forster?

A. I said it was possible it was delivered to Mr. Forster. I don't know for sure.

Q. Do you want to change your testimony that you prepared A-99?

A. Yes, I prepared A-99. I admit that, and I also prepared A-100. [4205]

Q. Take the notes receivable on the same day. The notes receivable, two statements made for the same day, would have to be the same, wouldn't they?

A. It would depend on the purpose of the statement.

Q. Mr. Taylor, is there any purpose in making a financial sheet, except to show assets accurately, liabilities accurately, and eventually surplus or net worth?

(Testimony of L. Hicks Taylor.)

A. Mr. Griffin, balance sheets have many stories connected with them. It depends on the approach that you want to make with your balance sheet.

Q. Mr. Taylor, does a profit and loss statement have any purpose except to accurately state the facts to show either a profit or a loss?

A. Profit and loss statements, if all your figures have been assembled so that they are complete and without variance, your profit and loss statement will reflect your true profit and loss. Many times, at the close of the year, your final figures aren't always definitely determined. Many times, there are changes in figures between the first and the thirtieth of the month.

Q. Let's go back to the two balance sheets, Mr. Taylor. A-99, you show notes receivable—these are notes, now—$3,444.94, don't you? [4206]

A. Yes, sir.

Q. In the other balance sheet, same date, you show notes receivable $3,847.89, don't you?

A. That is right.

Q. Now, a note is a written obligation of somebody owing Issaquah Creamery Company something, isn't it? A. Sure.

Q. How could those two statements on the same day differ as to the amount due on notes?

A. In an analysis of your figures, you change them from one position on a statement to another, if you are wanting to give a statement for a purpose.

Q. The statement of December 31, 1938, was

(Testimony of L. Hicks Taylor.)

given for the purpose of determining, one, assets and liabilities, wasn't it?

A. That was the purpose of it, yes.

Q. Number two, profit and loss, wasn't it?

A. There isn't any profit and loss with this A-99.

Q. All right; we will deal with the balance sheet alone, then, for the present.

Mr. Taylor, in A-99, your balance sheet shows accounts receivable. That would be money due Issaquah Creamery on open account, wouldn't it?

A. That is correct.

Q. $45,650.55, is that correct?

A. 56 cents.

Q. 56 cents; and in the other statement, the very same date, before you, it shows accounts receivable, $56,660.68? A. That is correct.

Q. Now, the fact is that on that date, people owed the Issaquah Creamery Company a certain amount of money, didn't they?

A. That is correct.

Q. Which of those—which of those statements of yours is correct as to the amount due?

A. If this statement was given for credit purposes, this statement would reflect the true figures.

Q. By "this" one, you are referring to 99?

A. 99, if given for credit purposes, yes.

Q. And then the work sheet in front of you that you used for income tax purposes does not reflect the true purpose, is that correct?

A. It would reflect the true figures of the ledger, yes.

(Testimony of L. Hicks Taylor.)

Q. It would reflect the true figures of the ledger?

A. Yes. [4208]

Q. The ledger was kept by you?

A. Two distinct purposes of two financial statements.

Q. The ledger was kept by you, solely?

A. Right.

Q. Under your control? A. Right.

Q. Mr. Taylor, in A-99, the inventory is $15,169.43, isn't it? A. That is correct.

Q. And on the same date at the same time in the other statement, it is $16,891.83, isn't it?

A. That is correct.

Q. You don't mean that either one is correct, do you? You mean that those are the correct figures? A. That is what I said.

Q. Which is correct, actually, as to inventory?

A. If this was given for credit purposes, which I stated, these were analyzed figures, and were correct figures.

Q. By "this", again, you are referring to 99?

A. 99.

Q. Why did you use a different figure for inventory in Exhibit A-100 on the same day?

A. It is possible that there was something in there that wasn't a saleable product taken in the inventory. [4209]

Q. Mr. Taylor, in A-99, under equipment, you show $75,375.17, don't you?

A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. And under the exhibit 100, it is $88,394.12, isn't it? A. That is correct.

Q. Which is actually factually correct, which statement?

A. If the credit statement—this is a credit statement. This statement was analyzed and properly made out as to values.

Q. Then that is the statement that should have been used for income tax purposes, isn't it?

A. Not necessarily.

Q. Mr. Taylor, A-99, depreciation reserve, is $54,195.80? A. That is correct.

Q. But on the other statement, $62,938.77?

A. That is correct.

Q. And on A-99, routes valued at $28,552.02, is that correct? A. Correct.

Q. And under A-100, $9,514.55?

A. That is correct.

Q. Mr. Taylor, why did you value the asset of cash higher in 100 than you did in A-99 but valued the [4210] routes higher in A-99 than you did in A-100?

A. This statement was made—I assume now—I am assuming this because I don't know who it was delivered to, or for what purpose—but I am assuming that this was a statement given for credit purposes. In the first place, possibly, in our depreciation schedule in the December 31st, A-100, possibly a piece of equipment had been sold and had been eliminated; that I don't know without trying to do some checking back. The purpose of this was

(Testimony of L. Hicks Taylor.)

to bring the routes to an appraised value. They did appear on the books only at $9500, but for credit purposes, we felt that the routes were worth more money. Mr. Forster appraised those routes, and they were placed on this statement for that purpose only. Any other figures that have been changed here have been done for the purpose for which this statement was made out.

Q. Will you turn to liabilities on those two statements, Mr. Taylor? A. Yes, sir.

Q. On A-99, you show milk account liability, $11,188.17, is that correct?

A. That is right.

Q. And on A-100, $9,616.53?

A. What is this, again? [4211]

Q. Milk accounts payable on A-100, $9,616.53?

A. Yes.

Q. Which is correct as to the accounts actually payable on this date?

A. I would say this statement had been properly analyzed and they were properly set up.

Q. What do you mean by "analyzed"?

A. We analyzed them as to what they were. Sometimes these accounts twist back and forth.

Q. Notes payable on A-99 were $12,729.29?

A. Yes.

Q. On A-100, $4,825.90?

A. On which is this one now? $4,825.90, yes, on this distributive statement, yes.

Q. Mr. Taylor, if you were using this statement, you say, being Exhibit A-100, for income tax pur-

(Testimony of L. Hicks Taylor.)

poses, why did you depreciate notes payable to some eight thousand dollars as compared with the statement to the bank, if it was a statement to the bank?

A. In working some of these, there is contracts payable. There is notes, sometimes, that are made out for a purpose and maybe carried in one or another account and not transferred over. When we made this statement, we assembled all those. There would be a working paper with this that would prove every one of these figures [4212] that were in my work papers turned in. If this were attached to it properly, we would just read them off and find them right together, but you are giving me part of this, and a little bit of that, and you expect me to sit here and tell you what eleven thousand dollars is composed of.

You have taken those files and played tit-tat-toe with them in Issaquah, and you expect me to give you answers to things that were made up that have a proof sheet that could be attached to them.

Q. My Taylor, my question is: if you were using A-100 for income tax purposes, how does it happen that you depreciated the liabilities in A-100 over A-99 when you say A-99 was analyzed and is correct?

A. With the work sheets attached to this, I can tell you how every figure worked out.

Q. You don't know, then?

A. You are handing me part of my work sheets. You jumbled up my work sheets so that nobody could find anything, and you expect me to pull

(Testimony of L. Hicks Taylor.)

this sheet out here and tell you that John Jones, Pete Smith make up that notes receivable and payable. Why don't you bring them out complete so that I can really answer you?

Q. Mr. Taylor, A-99, the accounts payable are $18,862.35, aren't they? [4213]

A. There are a combination of some figures, yes.

Q. And in A-100, the accounts payable are $7,853.20, aren't they?

A. That happens to be the ledger page balance, yes.

Q. Which was correct, Mr. Taylor, the ledger page of the ledger that you kept or A-99 that you say was especially analyzed?

A. The ledger page in the ledger was correct.

Q. Then——

A. (Interposing) But we assembled other figures and combined them.

Q. What figures would you combine for accounts payable? Accounts payable mean precisely an accounting of the accounts payable, don't they?

A. Right.

Q. And then, if your ledger was $7,853.20 will you explain to the jury how you get $18,862.35 on Exhibit A-99 which you have said, time after time, that you analyzed?

A. Will you go and get the files out and bring me the work sheet that ties to this?

Q. If I had it, Mr. Taylor.

A. Well, if you had it. You did have it, and your Attorney, Mr. Kachlein, had it, and Hans For-

(Testimony of L. Hicks Taylor.)

ster [4214] had it and this could have been proven if you hadn't of thrown them up in the air and tried to find which sheet belonged to another.

Q. Do you have any explanation, in answer to my question?

A. The net worth figures here prove within $300 of each other, up and down. That is proof in itself. You cannot change your total figures in the balance sheet that balances debits and credits, and these figures are within $300 of each other, so that there is no exaggerated figure in here.

Q. Mr. Taylor, have you any explanation of why on the same date in two different balance sheets you show account payable on the one hand at $7,-853.20 and on the other, $18,862.35?

A. Well, we have a Hans Forster account of $7,084.54, we have accounts payable of $7,853.20, and we have a discounts payable here of $1,355.48.

$18,293.22; you would make a comparison of accounts payable there. While it isn't the exact figure, it is very close to it.

Q. Mr. Taylor, to get a balance as between these two statements, what you did, among other things, was to manipulate inventory, wasn't it?

A. Inventory has been reduced by $1700. Probably [4215] a piece of equipment or some other item that was in the inventory and moved to another account.

Q. You changed routes valuation by nineteen thousand dollars, didn't you? A. Sure.

Q. And you threw into surplus on the other

(Testimony of L. Hicks Taylor.)

hand $22,000 as opposed to surplus in the other statement, didn't you, to make them balance?

A. Whenever you make an appraisal and develop a balance sheet—and I want you to know I didn't appraise that, Mr. Forster made the appraisal—I merely prepared this sheet in form—that appraisal was made by Mr. Forster, given to me, and I adjusted it to the figures.

Q. The surplus appraisal was given to you by Mr. Forster?

A. The appraisal of the equipment which would be the surplus figure.

Q. That change in equipment is $13,000, isn't it, approximately?

A. It is nineteen thousand dollars.

Q. Equipment on the other hand is "88" as opposed to "75", isn't it?

A. I beg your pardon; I thought you were talking about routes. That is right, "75" to "88".

Q. How did you get the difference in surplus, [4216] Mr. Taylor?

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): Will you explain to the Jury what surplus means in your statement?

A. Well, surplus is the accumulation of the profits that is credited to the surplus account, or becomes part of the working capital of your organization.

In other words, if you have a thirty-two thousand dollar capital, and if you accumulated forty-two

(Testimony of L. Hicks Taylor.)

thousand, in surplus, you have a working capital, or a working capital account, of $74,000 to do business.

Q. Your surplus in A-99 as of December 31, 1938, is $42,517.23? A. That is correct.

Q. And upon the same date, in Exhibit A-100, it is $64,695.03, isn't it? A. Yes.

Q. Which is correct?

A. They are both correct. They are both made from the same source of figures.

Q. How much surplus did Mr. Forster have on December 31, 1938, a surplus of $42,517.23 or a surplus of $64,695.03? [4217]

A. The record shows here on my—on Schedule 100, sixty-four thousand dollars.

Q. That is the correct one, is it?

A. That is the correct surplus in the books.

Without the books here to verify them, I would say it is correct.

Q. But A-99, showing a surplus of $42,000, you say, time after time, was analyzed?

A. That is correct. Those figures are correct.

Q. So the surplus in A-49 is correct, then?

The Clerk: A-99.

Q. (By Mr. Griffin continuing): A-99?

Mr. LeSourd: Objected to as argumentative. He testified they were both correct.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): Mr. Taylor, will you tell the jury how an item upon the same day —take a simple one—of notes payable, differing as

(Testimony of L. Hicks Taylor.)

they do in the two exhibits, can be correct? Just explain it to the jury.

A. Two types of notes in the way you handle your ledger. You might post something to a notes payable account that is an absolute note, signed, and then have a contract come in that hasn't been signed yet, but it goes [4218] into accounts payable, or to drafts payable, or to something else, temporarily. When you analyze it, you combine the two into one account as a note because it has proceeded into the form of a note.

Q. Mr. Taylor, did you analyze at the year-end for the purpose of balancing your books or of making a foundation for income tax returns?

A. Here is a definite set-up of the sheets that were made up, and as far as I know, without the copy of the tax return, this is what the tax return was made from, and, if I remember correctly, this tax return was audited in 1939, and we had no deficiencies as I remember.

Mr. Griffin: May the question be read, please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Witness: I think I answered the question.

Mr. Griffin: Will you mark this financial statement for identification, please?

The Clerk: Defendants' Exhibit No. A-101 marked for identification.

(Defendants' Exhibit No. A-101 marked for identification.)

(Testimony of L. Hicks Taylor.)

Mr. Griffin: I am passing some of these other [4219] years.

Q. (By Mr. Griffin): Handing you Exhibit A-101 for identification, I will ask you if this is a financial statement prepared by you and delivered to Mr. Forster as of December 31, 1940?

A. This appears to be a carbon copy of financial statement. It doesn't have any perforations on the edges so that this was probably not delivered to Mr. Forster, but it is probably a copy of the 1940 financial statement.

Q. Prepared by you?

A. I would say it was prepared by me, yes.

Mr. LeSourd: Same objection.

The Court: Objection overruled. A-101 may be admitted.

(Defendants' Exhibit A-101 admitted in evidence.)

Q. (By Mr. Griffin): On Exhibit A-101, financial statement, December 31, 1940, of Issaquah Creamery Company, I notice among assets, Hans Forster contract, $106,203.90, what is that item, Mr. Taylor?

A. You are kind of testing a fellow's memory in fourteen years. [4220]

Q. That wasn't the purpose of my question.

Mr. Griffin: I will withdraw the question at the present time. Maybe we can get it over the noon hour.

A. I don't know what it is right at the moment.

Mr. Griffin: I will state, if I may, the purpose of

(Testimony of L. Hicks Taylor.)

the question to help the witness, if the Court please.

Q. (By Mr. Griffin): Of practically all these statements, under liabilities, there has been a Hans Forster account, and now, in 1940, under assets, we get an asset account of $106,000 so that, if you will, perhaps be prepared to tell us about that at the noon recess.

A. You might dig through the records and find the work sheet that ties with that. It might help a little.

Mr. Griffin: Will you mark this one for identification, please?

The Clerk: Defendants' Exhibit A-102 marked for identification.

(Defendants' Exhibit A-102 marked for identification.) [4221]

Q. (By Mr. Griffin): Handing you A-102 for identification, I will ask if this is the profit and loss statement and balance sheet for November 30, 1941?

Mr. Cox: Of Issaquah?

Mr. Griffin: Of Issaquah, yes.

A. On further consideration, it is my work sheet.

The Court: Is it your answer, Mr. Taylor, that that was the profit and loss statement and balance sheet, or just the work sheet?

The Witness: Any time they are on that kind of paper, it is my special paper, you can always tell I made them.

The Court: My question was, you said it was your work sheet, and the question was, was it a profit and loss statement and balance sheet?

The Witness: May I see it? I was just glancing

(Testimony of L. Hicks Taylor.)

at it. I didn't want to delay so that I said "Yes".

(Whereupon, document was handed to the witness.)

The Witness: (Continuing) Yes.

Mr. LeSourd: Same objection, your Honor.

The Court: Has it been offered?

Mr. Griffin: I am offering it, yes.

The Court: Have you the same objection? [4222]

Mr. LeSourd: Same objection.

The Court: The objection may be noted. The objection will be overruled.

(Defendants' Exhibit No. A-102 admitted in evidence.)

Mr. Griffin: I have just one question on this, if the Court please.

Q. (By Mr. Griffin): Exhibit 102 shows a loss for November of $8,997.26, doesn't it?

A. That is correct.

Mr. Griffin: It is recess time.

The Court: Ladies and Gentlemen of the Jury: We will now take the noon-day recess, and the Court calls your attention to the admonition given you on similar occasions, and asks that you heed it on this occasion.

You may now be excused until 1:45.

(Whereupon, the Jury retired from the court room.)

The Court: You may step down.

The Witness: Thank you.

(Whereupon, the witness withdrew from the witness chair.)

The Court: Court will recess until 1.45. [4223]

(Testimony of L. Hicks Taylor.)

(Whereupon, at 12:17 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:45 o'clock p.m., April 20, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You have nothing, Mr. Griffin?

Mr. Griffin: No, your Honor.

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Taylor, over the noon recess, did you recall that this change that you carried Mr. Foster of $106,000 was at the time of the break-off between Issaquah and Alpine?

A. May I see the exhibit, Mr. Griffin, please?

Mr. Griffin: Exhibit A-101, please.

(Whereupon, exhibit was handed to Mr. Griffin [4224] by the Clerk, and in turn handed to the witness by Mr. Griffin.)

A. (Continuing) It is my opinion that that is the clearing account between the Alpine Dairy and the Issaquah Creamery Company, which would be in the form of an account receivable.

Mr. Griffin: Will you mark this balance sheet of August 31, 1945, please?

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit A-103 marked for identification.

(Defendants' Exhibit A-103 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-103 for identification, I will ask you if this is the balance sheet as prepared by you for Alpine Dairy, August 31, 1945?

A. This appears to be my copy of the balance sheet and profit and loss taken from my private files.

Q. Prepared by you?

A. Prepared by me, yes.

Mr. Griffin: I offer A-103.

Mr. LeSourd: We make the same objection, your Honor. Improper cross-examination and irrelevant and immaterial.

The Court: Objection overruled. A-103 may be admitted. [4225]

(Defendants' Exhibit A-103 admitted in evidence.)

Q. (By Mr. Griffin): A-103, Mr. Taylor, you show as of August 31, 1945,—you show a net worth, Hans Forster, $37,732.54, don't you, Alpine Dairy account? A. Yes, that is correct.

Mr. Griffin: Will you mark this sheet, please?

The Clerk: Defendants' Exhibit A-104 marked for identification.

(Defendants' Exhibit A-104 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-

(Testimony of L. Hicks Taylor.)

104 for identification, I will ask you if this is the balance sheet, Alpine Dairy, as prepared by you, December 31, 1948?

Mr. Obenour: 1948?

A. Yes, this appears to be out of my files.

Q. (By Mr. Griffin): Prepared for Mr. Forster of Alpine Dairy, wasn't it?

A. That was prepared from my files. He may have got an original of it.

Q. Did you deliver to Mr. Forster once each month, as you have heretofore testified, a profit and loss statement, [4226] and a balance sheet for these various enterprises? A. That is correct.

Q. And did you make some special ones for your files that you didn't deliver.

A. If I wanted to.

Q. Different from the ones you delivered to Mr. Forster?

A. I didn't say that, Mr. Griffin.

Q. I am asking you.

A. I said I wouldn't say that.

Q. I am asking you if you did?

A. I did not.

Mr. Griffin: All right. I offer A-104.

Mr. LeSourd: Same objection, your Honor.

The Court: Objection overruled. Exhibit A-104 may be admitted.

(Defendants' Exhibit A-104 admitted in evidence.)

Q. (By Mr. Griffin): A-104, Mr. Taylor, as of

(Testimony of L. Hicks Taylor.)

December 31, 1948, Alpine Dairy Balance Sheet, shows net worth in what amount?

A. $124,654.45.

Q. Thank you; now, it says "Deduct Withdrawals," is that $34,784.42? [4227]

The Court: What was the amount again?

Mr. Griffin: I inquired, if the Court please. I am not sure of the first figure. I think it is $34,-784.42. I am asking. It has been written over.

A. My interpretation of it, after all the working over of it, would be withdrawals were $24,784.42.

Q. (By Mr. Griffin): What withdrawals are referred to upon that sheet, Exhibit A-104?

A. To the best of my recollection, it would be estimated income tax payments and possibly the payment in March of the tax for the year 1947 charged to Mr. Forster's personal account.

Q. But nothing upon that balance sheet to show what any single item of withdrawal was, is there?

A. I don't believe that that is essential, on a balance sheet.

Q. I am just asking you, Mr. Taylor; that there is nothing on that balance sheet for those thousands of dollars you have referred to that shows a single item of what a withdrawal is, is that right?

A. This being the Alpine Dairy, individual ownership of Hans Forster, anyone looking at this would know it was Mr. Forster's withdrawals.

Q. Mr. Taylor, there isn't a single item on the sheet as prepared that shows a single withdrawal of a single amount, is there?

(Testimony of L. Hicks Taylor.)

A. Except right there.

Q. Except the total?

A. Yes, that is right.

Q. Where did you get that information?

A. From the ledger.

Q. And where did you get the information from the—to put on the ledger?

A. From the journal.

Mr. Griffin: Now, will you mark for identification this consolidated statement of Hans Forster, December 31, 1948, please?

The Clerk: Defendants' Exhibit A-105 marked for identification.

(Defendants' Exhibit No. A-105 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-105 for identification, I will ask you what that is, Mr. Taylor?

A. Somebody very foreign from me prepared this statement.

Q. You didn't prepare that one?

A. I did not prepare it as I can see nothing about [4229] it that is familiar.

Q. Your testimony is definite, sir, that you did not prepare it?

A. Unless you can bring any other documents that will bring this to my attention. Can you bring me another document?

Q. You have no recollection of having prepared Exhibit A-105 for identification?

A. Not right at the minute, no.

(Testimony of L. Hicks Taylor.)

Q. Did you prepare for Mr. Forster, or for anyone, a consolidated statement of the year-end, December 31, 1948, segregating the assets of Mr. Forster Alpine Dairy, Issaquah Creamery, Finstad and Utgard, Seattle—Renton Ice, and other properties of Mr. Forster?

A. I would say that my files would show whether I prepared such a statement or not and they should be produced in this court room for me to look at.

Q. Mr. Taylor, in preparation for this trial, you have gone over all the files available in the Government's office and in the office of Bogle, Bogle and Gates, haven't you?

A. Mr. Griffin, when I saw those files, I felt ashamed of myself to think that anybody would throw files around like they were a lot of scratch paper. One [4230] of the most disgusting things I ever saw was when I saw those files.

Mr. Griffin: May the question be read, if the Court please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) I would say that the Government made the files that they had—what they did have—a very small portion of what I took to Issaquah—they made them available to us, and the only time that I ever was in Kachlein's office to look at the files was yesterday afternoon.

Q. (By Mr. Griffin): You knew that your attorneys, in preparation for this trial, were in that

(Testimony of L. Hicks Taylor.)

office, and the files made available to them, everything that there was, don't you?

A. You say everything that there was?

Q. Everything that there was, yes.

A. Everything there was that they retained after they got through playing with the files.

Q. Now, going back to my question: have you any recollection as of today in making a consolidated statement as of December 31, 1948, of Hans Forster's [4231] assets, including but segregating, Issaquah Creamery, Alpine Dairy, Finstad and Utgard?

A. As I have testified, if I prepared such a document, it would have been in my files, and you could produce it. I have no recollection of any like that, but if I did, you have it in the files.

Q. And you don't recognize Exhibit A-105 for identification as prepared by you, is that correct?

A. Not at this sitting, I don't remember it.

The Court: A-105 for identification is a document which covers—which would be comparable to the statement you outlined in your question, Mr. Griffin?

Mr. Griffin: Yes, your Honor. It is headed "Hans Forster Consolidated Statements, 12-31-48".

Q. (By Mr. Griffin): Mr. Taylor, did you ever make for Hans Forster a consolidated statement of his business interests?

A. May I see that before I make an answer?

(Whereupon, document was handed the witness by Mr. Griffin.)

(Testimony of L. Hicks Taylor.)

A. (Continuing) I cannot recollect without working papers.

Mr. Taylor, if you were to make a consolidated statement as of Hans Forster, December 31, 1948,—and [4232] you are the man that was keeping the ledger—you wouldn't need any working papers, would you?

A. Mr. Griffin, every paper that I prepared had working papers to prove any changes that might have been made on the statement. If that statement was prepared, there are working papers in my handwriting that will show that very same thing in pencil writing.

Q. My question is:

That, having kept the ledger, you didn't require any working paper to take off a financial statement at that year-end, did you?

A. I always used working papers.

Q. And you consider the working paper an essential part then of the bookkeeping system that you maintained, is that right?

A. I might say they are very essential to your cross-examination.

Q. You considered the working papers, to which you have referred, a part of the books, didn't you?

A. Part of the working papers that are necessary to answer questions that you are putting to me.

Q. And, necessarily, to anyone inspecting the books and records maintained by you to be able to analyze them, is that correct?

(Testimony of L. Hicks Taylor.)

A. They would be very helpful, extremely helpful. [4233]

Q. Now, having begun with 1932 on the balance sheets and profit and loss statements that you prepared from year to year, and down into 1945, was there any time, Mr. Taylor—can you give a single statement that you delivered to Mr. Forster—balance sheet—upon which he could depend as to what his actual and true assets and true liabilities were?

A. Absolutely. The statements delivered to Mr. Forster showed exactly what the ledger showed, and they were correct, so far as all the information that I received.

A. And in going back to the December 31, 1935, which of the two statements referred to there would your ledger show?

A. Mr. Griffin, in preparing balance sheets and profit and loss statements, there are two distinct principles to work on; you work first to fit the regulations of the United States Treasury Department. That is your first and foremost duty. Number one.

Number two: a man who is fighting critical financial conditions must prepare financial statements for banks and credit institutions to show the nearest to his net worth that he possibly can the true value of his assets. Many times, appraisals are necessary to develop that, and that way, sometimes credit statements, [4234] financial statements, to banks, while they are absolutely true, will be different from the Federal Income Tax Statement.

(Testimony of L. Hicks Taylor.)

Q. You were conscious, then, were you, in preparing these statements, that you owed an obligation to the United States Government to prepare them correctly?

A. They were prepared correctly.

Q. My question is:

You were conscious of that obligation, were you?

A. I took care of it, yes, sir.

Q. Were you conscious of your obligation to your client, Hans Forster, that you should make true statements to the Government, or anyone?

A. I think that can be answered this way: there are two people that should be conscious of making statements to the United States Government.

Mr. Griffin: Your Honor, may the question be read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) I so did, to the best of my ability. [4235]

Q. (By Mr. Griffin): And you were conscious of that obligation as an accountant of Mr. Forster, is that right?

A. That was taken care of, yes, sir.

Q. Now, going back to my other question:

Which of the statements of December 31, 1935, one of which you delivered to the Bank, Peoples, and the other which you delivered to the Stanwood Bank—which of those statements showed upon your ledger?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Now, if your Honor please, we can go over and over this again, and I will object to it as repetitious. He said one of them reflects the basis for these assets for tax purposes, and the other reflects an appraisal of the correct form for credit purposes. It is simply repetitious, and taking time.

The Court: I don't believe it is clear. The Court will overrule the objection.

You are referring, Mr. Griffin, are you specifically to the one year?

Mr. Griffin: Yes, the one year 1935, Exhibits A-95 and Exhibit 65.

Mr. LeSourd: Will you hand the witness the exhibits so that he knows what he is talking about?

The Witness: Also the ledger for 1935, please.

The Court: The ledger is not in evidence, is that correct?

Mr. Griffin: The ledger is not in evidence, no, your Honor.

Q. (By Mr. Griffin): Mr. Taylor, did you deliver the ledger kept by you to the Issaquah Creamery? A. Absolutely.

Q. For the year 1935?

A. From 1928 clear through to 1950, in February.

Q. How about including March 31, 1950?

A. It is possible.

Q. Do you recall that you made a balance sheet for March 31, 1950? A. I believe——

(Testimony of L. Hicks Taylor.)

Q. (Interposing) And profit and loss statement?

A. I believe I made one, February 28th.

There may be March, also. I am not positive.

Q. Handing you Exhibits A-95 and A-65, which of those statements was taken from your ledger maintained for that period?

A. They both were.

Q. They both were; very well. Each to a bank, weren't they; Bank of Stanwood and Peoples Bank?

A. I think I testified to that, yes. [4237]

Q. So that they were each written then, for the same purpose, weren't they?

A. Credit purposes, yes.

Q. Why would they so disagree, if the evidence shows, and they show, the one from the other, then?

A. The correct statement to the bank at Stanwood was made for credit purposes based on the market value. The other to the Peoples Bank was just a straight take-off.

Q. What do you mean, a "straight take-off"?

A. A take-off of the record.

Q. And the other one, do I understand, you manipulated?

A. We placed the value of the assets at the market, and no manipulation.

Q. Which figures did you use for tax purposes, then?

A. I can't tell you which of those went on the tax return, because they are not relative to it.

(Testimony of L. Hicks Taylor.)

Q. The statement of profit and loss for the year ending December 31, 1935, is not relevant?

A. Neither one of those statements have anything to do with the tax return.

Q. Did you adjust figures for the purpose of tax returns? [4238]

A. If they were necessary to make the profit correctly.

Q. Mr. Taylor, how can you adjust cash on hand for the purpose of any return?

A. There are many, many ways of doing that in the course of a statement. There might be warrants showing in the cash account. There might be some N.S.F. checks being held in the cash account to be transferred to another account. There are various ways a cash account can be adjusted to a true actual cash on hand.

Q. What was the true, actual cash on hand, December 31, 1935, where you show debit, $6,213.76 in one and in the other, cash on hand, $2,197.93?

A. I believe I testified to that this morning.

Q. Now, in addition to preparing the income tax returns for Mr. Forster, and his corporations, and the family and the excise tax returns to the State, you also prepared the excise tax returns for the City of Seattle, didn't you?

A. They all went in a sequence, yes.

Q. And you had the handling for Mr. Forster's corporations of the payments for the annual license fees for the State of Washington, didn't you?

A. Annual license fees?

(Testimony of L. Hicks Taylor.)

Q. Corporate license fees? [4239]

A. Well, I presume I filled them out and mailed them to Hans to mail a check in. The secretary generally does that.

Q. Did you fill them out for Mr. Forster to mail a check in, or did you make the checks out?

A. Oh, if my recollection is right, I mailed them to Issaquah and the checks were mailed from there. It is possible that they mailed the check back to me, and I mailed it in. I don't know. That is trying to remember, 'way back.

Q. The receipts for corporate taxes, Issaquah Creamery Company, went to you at 501 Textile Tower, didn't they?

A. Oh, yes; they were mailed to me. Yes, sometimes they would be sent in, too.

Q. And you attempted—you were at times in default in the payment of the corporate license fee, weren't you?

A. Not unless the check was delayed from Issaquah.

Q. Were you in default at times for payment of your license fees to the State of Washington?

A. Not unless Issaquah was slow in mailing it to me.

Q. You, also, Mr. Taylor, took care of the conferences with, and in making out the detailed list of [4240] personal property for the King County Assessor, King County?

A. I may have done that. I did a lot of things.

(Testimony of L. Hicks Taylor.)

Q. You did that through all the years, didn't you?

A. Not all the years. The last few years Mr. Forster handled it himself.

Q. You did it for a great many years, sir?

A. I would say so, yes.

Mr. LeSourd: It seems, if your Honor please, we are going farther and farther afield. I don't know whether my sustaining objection is still remaining to this.

Mr. Griffin: This is a different line.

The Court: I wouldn't think so.

Mr. LeSourd: Then I wish to raise the same objection to this, irrelevant and immaterial and improper cross-examination.

Mr. Moriarty: We join in that objection. It is going to personal property taxes.

The Court: Is there a question pending here?

Mr. Griffin: No, your Honor.

May I suggest, he testified on direct to the great amount of work he did, and what he wasn't paid, and I am showing a great deal more work. [4241]

Mr. LeSourd: If that is Mr. Griffin's purpose, I will stipulate to it, but we are going into extraneous things.

The Court: As soon as the question is put, you may object.

Mr. LeSourd: I tried to, but it was answered before I could get my objection in.

Q. (By Mr. Griffin): You filed the corporate—

(Testimony of L. Hicks Taylor.)

you prepared the incorporation papers for Simonson and Forster, did you not?

A. It is my recollection that I copied the Issaquah Creamery charter, and mailed it in because they didn't want to hire an attorney. I received no fees for it.

Q. My question was: you prepared the corporation papers for Simonson and Forster?

A. I so stated.

Q. You prepared the pricing under O.P.A., didn't you? A. Will you state for whom?

Q. Issaquah Creamery? A. I did not.

Q. You didn't have anything to do with that?

A. I may have typed up something, but I [4242] knew nothing about costs or prices.

Q. By the way, speaking about your knowing anything about costs and pricing, you typed up the basic report to the Office of Price Administration in regard to the pricing of Issaquah Creamery, didn't you?

A. In what year? You might let me see the document. Maybe I could tell you better.

The Court: Mr. Taylor, the questions are put and counsel will object if they think it is not proper, and you may give your answer and explain it, if you wish, but this is not a conversation you are carrying on.

Q. (By Mr. Griffin): Do you recall that you prepared the O.P.A. pricing, Mr. Taylor?

A. No, I do not, without seeing the documents.

(Testimony of L. Hicks Taylor.)

The Clerk: Defendants' Exhibit A-106 marked for identification.

(Defendants' Exhibit No. A-106 marked for identification.)

Q. (By Mr. Griffin): Did you obtain additional gasoline during O.P.A. period for your own use due to your work at Issaquah Creamery? [4243]

A. Yes, it appears to me they moved me from an "A" card to a "B" card so that I could run out to Issaquah.

Q. Handing you A-106 for identification, I will ask you if you dictated the original of that?

A. Yes, I wrote this up. The copy of it you have made sometime.

Mr. LeSourd: May I ask Mr. Griffin why the actual carbon copy wasn't brought into evidence, rather than the copy having been made of it?

Mr. Griffin: Because that is the only document that I found in connection with that particular matter in the file.

Mr. Cox: I show a letter on the same subject on the Alpine letterhead.

Mr. Griffin: This says "copy," and that is the reason. I searched certain of these boxes, and this is the only one I found. That is answering your question,—the only one I found.

Mr. LeSourd: The witness identified it as a copy, so that I will not object to it on that ground. I think it is completely irrelevant and immaterial, and I object to it on that ground, and improper examination.

(Testimony of L. Hicks Taylor.)

Mr. Moriarty: The Government joins in the objections and asks the Court to note the date. [4244]

The Court: I am inclined to sustain the objection.

Mr. Griffin: Does not your Honor—it is offered as an impeaching document of the witness's testimony. I am concerned only with Mr. Taylor's own dictation of the first half of it. I am not concerned about getting gasoline at all, but only his description of himself, and his relationship.

The Court: In view of the nature of the application and all, I believe it is the type of letter, and the ostensible purpose of a letter of that character might not serve to be particularly relevant to the issue here involved.

Mr. Griffin: May I ask the question if he did not describe himself as——

Mr. LeSourd: (Interposing) Just a moment.

Mr. Griffin: I will not make a statement that is either offensive or that——

The Court: (Interposing) You may proceed.

Mr. Griffin: May I ask a question incorporating his own description of himself, as to whether he so did?

The Court: I believe not, Mr. Griffin. I think that would be subject to the same objection that I believe may be made properly to this exhibit. [4245]

Mr. Griffin: Hold this one out, because I want it later.

Q. (By Mr. Griffin): You handled for Mr. Forster, did you not, and drafted milk agreements with

(Testimony of L. Hicks Taylor.)

the Seattle Milk Shippers' Association and Issaquah Creamery?

A. Without copies of documents, I couldn't testify to it. I am not sure.

Q. You advised Mr. Forster in an advisory capacity, did you not, as to whether he should sign agreements with the Seattle Milk Shippers' Association?

A. That is a rather new departure. I didn't know that I advised him about how he should sell or buy milk.

Mr. Griffin: Will you mark this for identification, please?

The Clerk: Defendants' Exhibit No. A-107 marked for identification.

(Defendants' Exhibit No. A-107 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-107 for identification, I will ask you what that is, Mr. Taylor?

A. It is my recollection that this was typed, and this agreement is the property of the Seattle Milk Shippers' [4246] Association, and this was typed, and handed to me, but never went beyond that, and remained in my files, as far as I can recollect it.

Mr. Griffin: Will you mark this sheet for identification?

The Clerk: Defendants' Exhibit A-108 marked for identification.

(Defendants' Exhibit No. A-108 marked for identification.)

(Testimony of L. Hicks Taylor.)

Q. Handing you Exhibit A-108 for identification, Mr. Taylor, is this your handwriting?

A. You missed one. That is not my handwriting.

Q. None of it?

A. No. That I see on there, at all.

Q. Sir?

A. I don't see my handwriting on there, at all.

Q. Did you attend any meetings of the Seattle Milk Advisory Board?

A. Yes, I was the buffer for Mr. Forster. I went and attended a number of times.

Q. Correspondence from the Seattle Milk Industry Board was directed to you?

A. Sometimes, yes.

Q. And the same is true of the Seattle Milk Shippers' Association? [4247]

A. So far as I know, they were both the same. I am not sure.

Q. And now, down until after you were sentenced, the relationship between you and Mr. Forster was very close, was it not?

A. In a business way, to some extent, yes.

Q. In a business way? A. That is right.

Q. Not in a social way? A. No.

Q. Well, for how many years did you have lunch at the home of Mr. Forster when you were out at Forster?

A. That hardly makes sociability. It was just for convenience.

Q. My question was:

(Testimony of L. Hicks Taylor.)

For how many years did you have lunch with Mr. Forster in his home at Issaquah?

A. Well, offhand, on all the times that I went to Issaquah.

Q. And you have testified that during those luncheons, you did not discuss business, haven't you?

A. Not to any great extent did we ever discuss business.

Q. Well, if your relationship was that strictly of business and not social, what did you discuss, if not [4248] business?

A. Oh, I don't know; various things that went on around the country.—Basketball, I think the last few years, because that was the principal subject of the Alpine Dairy for about ten years.

Q. The principal subject of the Alpine Dairy for about ten years was basketball, is that right?

A. That is right.

Q. Not milk? A. Not at his home, no.

Q. Among other things, Mr. Taylor, you loaned money from time to time to the Issaquah Creamery, did you not?

A. Well, unfortunately, my financial position was much better than Mr. Forster's, so I did occasionally help him slightly.

Q. Slightly, you say; as of 1939, do you recall a loan that you made, $5,500, to Issaquah Creamery?

A. It is possible.

Q. You did, didn't you?

(Testimony of L. Hicks Taylor.)

A. I don't just recollect. If I saw the note, it would refresh my mind.

Mr. Griffin: Excuse me a second.

Will you mark these three notes, if you will, please, as one exhibit? [4249]

The Clerk: Defendants' Exhibit A-109 marked for identification.

(Defendants' Exhibit A-109 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-109 for identification, I will ask you what those are?

A. Those are loans that I made to Mr. Forster.

Q. That is, notes evidencing loans?

A. Notes evidencing loans, yes.

Q. And the loans that you made were based more upon friendship and necessity, were they not, than the financial worth of the Issaquah Creamery at that time?

A. The early loans were made because of financial lack. The $5500 loan I don't have particular memory of. It only ran for 30 days. Just what it was for, at this time—it is only a 30-day loan.

Mr. Griffin: I offer A-109 simply because the witness on the stand asked to see the notes.

Mr. LeSourd: We have no objection.

The Court: If there is no objection, Exhibit A-109 may be admitted.

(Defendants' Exhibit A-109 admitted in evidence.)

Q. (By Mr. Griffin): During this same period,

(Testimony of L. Hicks Taylor.)

1938-39, Mr. [4250] Forster was making loans to the Issaquah Creamery, was he not?

A. It is possible.

Q. These loans were discussed with you?

A. Possibly some of them.

Q. You prepared the notes, did you not, representing the loans?

A. I do not recollect for sure. I may have.

Mr. Griffin: Will you mark these two notes for identification, please?

The Clerk: Defendants' Exhibit A-110 marked for identification.

(Defendants' Exhibit No. A-110 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-110 for identification, I will ask you what those two documents are?

A. One note is dated July 6, 1938, for $20,000 loaned by Mr. Forster to the Issaquah Creamery Company and marked "paid"; and another dated January 3, 1939, for $7,000 to the Issaquah Creamery Company.

Q. Your signature as secretary on each one?

A. That is correct.

Q. Did you prepare those notes?

A. I did. [4251]

Q. Was interest paid upon those notes?

A. I presume it was. It would have gone through the journal if it was.

Q. Did you include interest to Mr. Forster in the income tax return upon those notes?

(Testimony of L. Hicks Taylor.)

A. Yes, if he supplied it to me.

Q. My question is: Did you?

A. Yes, if he supplied it.

Q. Did he supply it? A. I don't know.

Q. You knew about the notes, didn't you?

A. Yes, I knew about the notes.

Q. Why didn't you return the interest as income to Mr. Forster whether he supplied it or not if you knew about the notes?

Mr. LeSourd: If your Honor please, we object, first, to the form of the question, and, secondly, this matter is completely irrelevant and immaterial and not proper cross-examination.

Mr. Griffin: I will withdraw that question.

Q. (By Mr. Griffin continuing): Mr. Taylor, you also handled the purchase of office equipment for Mr. Forster, Alpine Dairy, Issaquah Creamery, didn't you?

A. I recommended the purchase of office equipment. [4252]

Q. And you purchased office equipment on your own signature loan?

A. I may have, but Issaquah paid for it.

Q. Yes, but you did the purchasing of the necessary office equipment, didn't you?

A. If it was necessary, yes, after Mr. Forster approved it.

Q. And you prepared the form of sales books and vouchers that were to be used, didn't you? Issaquah Creamery and Alpine Dairy?

(Testimony of L. Hicks Taylor.)

A. Most assuredly I did. The record shows it plainly.

Q. You also handled the matter of contracts and drafting of contracts on the sale of equipment by the Issaquah Creamery, didn't you?

A. What is this you are saying again? Will you ask that question once more?

Q. Issaquah Creamery sold equipment from time to time, did it not—freezers, for example?

A. And you say I prepared those?

Q. My first question is:

Issaquah Creamery was in the business—part of its business—in selling freezers, wasn't it?

A. Not generally, no. If I prepared any, it was [4253] very few.

Q. Do you recall preparing any?

A. I might have prepared one or two 'way early.

Q. You did prepare them, didn't you?

A. It is possible.

Q. You also handled the matter of garnishment, did you not, and collections?

A. It is possible that when we first started at Alpine, that I may have handled the return of them, to talk to the attorneys to get them cleared up.

Mr. Griffin: It is recess time.

The Court: Ladies and Gentlemen of the Jury:

We will recess now, and the Court calls your attention to the admonition given you on similar occasions, and asks that you heed it on this occasion.

You may now be excused.

(Testimony of L. Hicks Taylor.)

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 2:47 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:03 o'clock p.m. April 20, 1954, at which time, Counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court [4254] room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are in the court room?

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Mr. Griffin: I understand I did not offer Exhibit A-110 for identification, which are the two notes from Issaquah Creamery Company to Hans Forster. I now offer them.

The Court: If there is no objection, they may be admitted.

(Defendants' Exhibit No. A-110 admitted in evidence.)

Mr. Griffin: I may describe them, if the Court please. One note is dated July 6, 1938, $20,000 payable two years, Issaquah Creamery Company to Hans Forster, signed Hans Forster, President, L. Hicks Taylor, Secretary; and the other, January 3, 1939, $7,000, ditto.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Griffin): Now, did Mr. Forster give you the amount of interest paid on those notes, Mr. Taylor? A. I do not—— [4255]

Mr. LeSourd: (Interposing) Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Q. (By Mr. Griffin): Did you include the interest paid upon those notes?

Mr. LeSourd: Same objection.

Mr. Griffin: Just a moment.

Mr. LeSourd: Excuse me.

Q. (By Mr. Griffin continuing): In Mr. Forster's tax return?

Mr. LeSourd: Objected to as irrelevant.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): You handled the matter and advised on the matter of leasing various properties by Mr. Forster, didn't you, Mr. Taylor? A. It is possible.

Q. Is it possible, or is it a fact?

A. Without a statement of what, I wouldn't remember.

Q. You have no recollection, then, of assisting, or drafting, in any leases for Mr. Forster? By "Mr. Forster" I mean any of his enterprises.

A. I don't recollect without having my memory [4256] refreshed a little as to what they were.

Q. Did you have anything to do—put it this way: Did you take care of the matter of claims under insurance policies, damage to equipment and trucks?

(Testimony of L. Hicks Taylor.)

A. I think Mr. Meek handled all that.

Q. Did you take care of the matter of the licensing of trucks?

A. I think Mr. Meek testified that he handled all that. I don't believe I ever obtained a license for a truck that I remember.

Q. Did you—were the insurance policies on the trucks deposited with you?

A. I haven't any recollection of them being.

Q. Were you advised from time to time when trucks had been disposed of so that you could obtain a correct inventory?

A. I believe that Mr. Meek now and then would contact me if a truck was disposed of, and we would check the information.

Q. On October 5th of 1949, did you have a conference with Mr. Hagstrom in regard to a proposed insurance plan for Mr. Forster?

A. It is my recollection that I did, yes.

Q. In what capacity were you acting in that connection? [4257]

A. I believe, if I remember correctly, that Mr. Forster didn't want the policy, and asked me to kind of diplomatically tell him so.

Q. Did you? A. Well, I did my best.

Q. Did Mr. Forster ever purchase any real estate about which he did not confer with you?

A. Oh, yes. Considerably.

Q. What?

A. Oh, all the real estate around the Alpine

(Testimony of L. Hicks Taylor.)

Dairy. He handled that himself, or through somebody else. I didn't know about it.

Q. I think you testified that you advised Mr. Bezeau of Alpine Dairy to send these discount checks to Issaquah. That is because they had not been cashed, is that correct?

A. To return them to Mr. Erickson, yes.

Q. At Issaquah? A. Yes.

Q. For what purpose, Mr. Taylor?

A. Cancellation.

Q. Did you instruct Mr. Erickson how to cancel a check that had not been cashed?

A. I didn't need to. He knew how.

Q. And you knew how? [4258]

A. I don't know.

Q. Do you know how?

A. I think I could accomplish it, yes.

Q. And uncashed checks payable to a third party should be cancelled, should they not?

A. Correct.

Q. How? A. By destroying it.

The Clerk: Defendants' Exhibit No. A-111 marked for identification.

(Defendants' Exhibit No. A-111 marked for identification.)

Q. (By Mr. Griffin): You wrote all the checks on Arctic Gardens, didn't you, Mr. Taylor?

A. Quite correct.

Q. Handing you Exhibit A-111 for identification, what is that?

A. That is a check to the Peoples National

(Testimony of L. Hicks Taylor.)

Bank, written by me on April 30, 1947, and it is my opinion that that is marked "void," is it not?

Q. What is the amount?

A. $3,934.51. I might explain that in handling merchandise with the Peoples Bank, it was necessary to release warehouse receipts. They called me on a warehouse [4259] receipt, and I wrote this check according to their instructions. When it cleared, it was for less money and they charged the account with it and returned this check to me, and I voided it.

Mr. Griffin: I offer A-11 for identification.

The Clerk: A-111.

Mr. Griffin: A-111, pardon me.

Mr. LeSourd: We fail to see the materiality of it, your Honor, and object to it on that ground, and improper cross-examination.

The Court: I am inclined to sustain the objection. Does it have relationship only to the last answer?

Mr. Griffin: No. To the interrogation that Mr. Erickson knew how to void checks, and he knew how to void checks, and he says this check is voided. I am curious to find out how he voided it.

The Court: In view of the objection, the Court will sustain the objection.

Mr. Griffin: This, of course, is within the period.

The Court: Yes, but it has nothing to do with the issue involved, only as to his testimony regarding voiding of a check: is that correct?

Mr. Griffin: No, he testified he ordered [4260]

(Testimony of L. Hicks Taylor.)

Bezeau to send the discount checks upon which the Government is relying to Issaquah, and evidence develops that those checks were not voided.

The Court: The fact he may have not voided one of his own checks wouldn't mean he didn't know how.

Mr. Griffin: Well, only to the extent he is the accountant and said Erickson knew how. If he didn't do his own——

The Court: (Interposing) Well, the Court will sustain the objection.

Mr. Griffin: All right.

Q. (By Mr. Griffin): You drew the agreement, did you not, as far as Arctic Gardens was concerned, between Mr. Forster and Mr. Brehm?

A. I think, if you will look up the records, you will find that Leon Wolfstone formed that corporation and took care of the legal matters pertaining to it.

Q. I didn't refer to the incorporation, but to the agreement between Mr. Forster and Mr. Brehm; did you draft that agreement?

A. I don't know, unless you can refresh my memory.

Mr. Griffin: Will you mark this—excuse me, a minute. [4261]

(Whereupon, there was a brief pause.)

Mr. Griffin: (Continuing) Will you mark this document for identification, please?

The Clerk: Defendants' Exhibit A-112 marked for identification.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-112 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-112 for identification, what is that, Mr. Taylor?

A. I am afraid it doesn't give me any thought of what it covers.

Q. Whose handwriting is it, Mr. Taylor?

A. This is my handwriting, but I don't recollect what it ties onto.

Q. The handwriting and the figure below the tape are yours?

A. Oh, yes. Those are mine, but I don't recollect what it ties onto.

Q. Would it refresh your recollection if it is suggested that the adding machine tape is taken from the building cash register, or the cash register building account?

Mr. LeSourd: Objection, your Honor, to matters that are not proper cross-examination and [4262] irrelevant and immaterial.

The Court: This comment is to refresh your recollection.

Mr. LeSourd: The comment indicates it is going into a matter not covered on direct, and irrelevant and immaterial to this case.

The Court: I am not sufficiently informed at this time to know.

Mr. Griffin: It is preliminary.

A. No, it doesn't clear anything, to me.

The Court: This is merely an answer to the question about refreshing recollection.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Yes.

Will you mark for identification this top, which I tore off?

The Clerk: Defendants' Exhibit No. A-113 marked for identification.

(Defendants' Exhibit No. A-113 marked for identification.)

Q. (By Mr. Griffin): Handing you A-113 for identification, Mr. Taylor, which I tore off of this before I handed it to you, that is not in your handwriting, is it?

A. No, this is not in my handwriting.

Q. Does it refresh your recollection now as to what [4263] the tape on A-112 is above your handwriting?

A. I would assume from this that it had something to do with the building account, but I can't say positively because I do not remember the figures.

Q. What was to be the—you had a conference, did you not, in regard to the building account with the Peoples Bank?

Mr. LeSourd: Objected to, your Honor, as improper cross-examination and irrelevant and immaterial.

The Court: This is the building account?

Mr. Griffin: Of the Alpine Dairy on which testimony in chief by the witness from the Peoples Bank showed that they suggested that a separate building account be set up. That was the Government's case.

(Testimony of L. Hicks Taylor.)

Mr. Moriarty: We join in the objection, your Honor. Immaterial, and improper cross-examination.

Mr. Griffin: It is preliminary to what I want to reach.

Mr. LeSourd: Well, what he wants to reach is obviously in connection with an utterly immaterial matter that wasn't covered in direct examination at all.

The Court: Well, the fact that it may not have been covered doesn't mean it wouldn't be relevant. I haven't any knowledge of what the matter ultimately shown here is, and the Court will overrule the objection on the [4264] representation it is a preliminary question.

Q. (By Mr. Griffin): Mr. Taylor——

Mr. Griffin: Strike that. I offer Exhibit A-112 at the present time, limited solely to the handwriting identified by the witness.

Mr. LeSourd: We object to it, your Honor, on the ground there has been no identification that would indicate the relevancy or materiality of it, and improper cross-examination.

Mr. Moriarty: We join in the objection, if your Honor please.

The Court: Sustain the objection.

Mr. Griffin: Would your Honor look at the identified portion?

(Whereupon, proposed exhibit was handed to the Court by Mr. Griffin.)

The Court: I don't see any relevancy, Mr. Grif-

(Testimony of L. Hicks Taylor.)

fin. If you wish to discuss it in the absence of the Jury at a later time, the Court will hear from you, if you wish to re-offer it then.

Mr. Griffin: I am dealing with one of the most relevant things in the case, and that is Account 198. That is why these questions have been preliminary, to reach that point. [4265]

Mr. LeSourd: Well, I say, if your Honor please, if that was so important, Counsel should have shown it as part of his case. To drag something in on cross-examination that this witness cannot identify to show relevancy is beyond the scope of the direct examination.

The Court: Well, I think I will adhere to the ruling at this time, and hear the matter when we recess if you wish to make a further showing, Mr. Griffin.

Mr. Griffin: Very well.

Q. (By Mr. Griffin): You spoke of appraisals of equipment and property, Mr. Taylor. In connection with those appraisals, there were disputes, were there not, as to the cost of appraisals?

A. Nothing that I remember anything about.

Q. As a matter of fact, you handled the disputes?

A. I have forgotten it, if I did.

Q. You drafted the agreements, did you not, under which Green Pastures was acquired by Mr. Forster?

A. I don't recollect unless you can refresh my memory.

(Testimony of L. Hicks Taylor.)

Q. You handled, did you not, the matter of the application for license to the State of Washington and the Federal Government in connection with the handling [4266] of wine and beer?

A. For whom?

Q. Issaquah Creamery Company.

A. It is possible that I might have participated in it.

Q. You have no recollection?

A. I don't remember, offhand, no.

Mr. Griffin: Will you mark these two sheets, please?

The Clerk: Defendants' Exhibit A-114 marked for identification.

(Defendants' Exhibit A-114 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-114 for identification, I will ask you what that is?

I call your attention to the back sheet. Turn it over, if you will. There is some writing on there.

A. Yes; that is dated March 15, 1936.

Q. Does it refresh your recollection?

A. Yes, it does, Mr. Griffin.

Q. You did handle the matter?

A. Yes, I remember it now.

Mr. Moriarty: The Government objects to the introduction. [4267]

Mr. Griffin: I haven't offered it.

Mr. Moriarty: Oh, you haven't. We will object, then.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: I will not offer it. I simply used it to refresh recollection.

Q. (By Mr. Griffin): Now, Mr. Taylor, in addition to the accounting work that you did from the time that Mr. Forster became associated with Issaquah Creamery to and including March 31, 1948,—pardon me, 1950,—you assisted Mr. Forster in these matters that you testified to on direct examination and upon cross-examination, didn't you?

A. A good many of them, yes.

Q. Was there any accountant upon whom Mr. Forster relied during that entire period of time except L. Hicks Taylor?

A. I am sure he relied upon me, yes.

Q. You took pride, did you not, in being associated with the Issaquah Creamery Company?

A. I most assuredly did.

Mr. Griffin: Will you mark this, please?

The Clerk: Defendants' Exhibit A-115 marked for identification.

(Defendants' Exhibit No. [4268] A-115 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-115 for identification, I will ask you what that is?

A. This is a—I don't know what you call it—a list of recipes and a picture of the Issaquah Creamery Company, and I even have my picture in it. It is a good ad.

Q. A brochure, would you say, of the Issaquah Creamery Company?

A. You may call it what you like.

(Testimony of L. Hicks Taylor.)

Q. What do you mean, it is a good ad, Mr. Taylor? A. A good ad.

Mr. Moriarty: If it is offered for impeachment purposes, I think Counsel ought to make a statement, and the only purpose in which it might be offered is on impeachment purposes.

Mr. Griffin: The only purpose for which it is offered is to show the relationship of Mr. Taylor to the Issaquah Creamery Company.

Mr. Moriarty: He already admitted that.

Mr. Griffin: Not as I understand his testimony. Excuse me a second. At the bottom of the first page and [4269] turning over to the next page, if the Court please.

Mr. Moriarty: That is also 1942, if your Honor please.

(Whereupon, proposed exhibit was handed to the Court by Mr. Griffin.)

The Court: I am inclined to sustain the objection, Mr. Griffin.

Q. (By Mr. Griffin): You drafted Mr. Forster's first will for him, didn't you, Mr. Taylor?

A. I believe so, yes, a simple will.

Q. You were the named executor in the will that was in existence until after these troubles arose, weren't you?

A. It is possible when Mr. Forster left for Switzerland, or when he planned it, he didn't have a will of any kind. I suggested him to an attorney and have one filled out, but he didn't care to, and I

(Testimony of L. Hicks Taylor.)

had a simple will in my office that I filled out for him to sign.

Q. When was it that Mr. Forster went to Switzerland that you are referring to?

A. Well, possibly around 1937 and back in there. I don't remember the date of the preparation of the will.

Q. Your relationship with Mr. Forster was so [4270] close that you wired him to cable you if he was safe on landing, didn't you?

A. I believe that in 1937, it is possible that that is the case. I am not sure.

Mr. Griffin: Will you mark this cable, please?

The Clerk: Defendants' Exhibit A-116 marked for identification.

(Defendants' Exhibit A-116 marked for identification.)

Q. (By Mr. Griffin): Handing you A-116 for identification, and referring only to this cable, I will ask you what that is, Mr. Taylor?

A. It must have been something connected with me. My name is all over it, but I haven't written any of it.

Q. No? A. So——

Q. (Interposing) Does it refresh your recollection that you sent a cable to Mr. Forster inquiring whether he was safe in Switzerland?

A. It does refresh my recollection to this extent: the war had commenced over there, and we had information here that Forster might not get out of [4271] Switzerland, and the group of us got

(Testimony of L. Hicks Taylor.)

together and decided we should try to determine what his condition was, and I believe that was the reason for this cable.

Q. Signed by you?

A. Well, it must have been, although that is not my writing.

Q. It would be 'phoned in?

A. Possibly. I don't recollect that.

Q. And at that time, you held a power of attorney from Mr. Forster during his absence, didn't you?

A. Without seeing it, I couldn't say, for certain. I am not positive of that.

Q. You had charge of his business while he was gone on that trip?

A. There were three or four parties who had charge of various departments at the time, if any difficulties arose. I was to sit in, and see what was the best thing to do.

Q. By the way, you mentioned, with reference to an Arctic Gardens check of fifty dollars and seventeen cents, that it would have cost you three cents to send the 17 cents; do you recall?

A. Yes, I remember very well.

Q. As a matter of fact, that was an account at the Peoples National Bank of Washington, wasn't it? [4272] A. Yes.

Q. You also had an account in the National Bank of Commerce, didn't you?

A. I believe we did have a small account; I am not sure.

(Testimony of L. Hicks Taylor.)

Q. Do you recall that you closed out that account, as well? A. It is possible.

Q. And didn't remit?

A. How much was it?

Q. I am asking if you recall?

A. I don't remember that, no.

Mr. Griffin: Will you mark this for identification, please?

The Clerk: Defendants' Exhibit A-117 marked for identification.

(Defendants' Exhibit A-117 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-117 for identification, I will ask you what that is?

A. The Arctic Gardens had a small account in the National Bank of Commerce, the reason being that this combination of the Arctic Gardens and Mr. Brehm dealt with the National Bank of Commerce and Mr. Forster with the [4273] Peoples Bank, and they each had their loans respectively in the banks and it was necessary to carry a small balance there to take care of interest payments and possibly demand notices and we carried a small account for a small time, and then in 1948, when it was not necessary to carry that account, I closed this out and from the looks of the check, credited it to my services account. It is $64.57.

Q. The question, Mr. Taylor,—can we put it this way: that this is a statement of the National Bank of Commerce with a cancelled check attached?

A. That is correct, made out to me.

(Testimony of L. Hicks Taylor.)

Q. Made out by you to yourself, is that right?

A. That is right.

Mr. LeSourd: We have no objection.

Mr. Griffin: I offer A-117.

Mr. Moriarty: No objection.

The Court: A-117 may be admitted.

(Defendants' Exhibit A-117 admitted in evidence.)

Q. (By Mr. Griffin): The check was cashed—was made by you for Arctic Gardens payable to L. Hicks Taylor, is that right? A. Yes.

Q. And deposited to your personal account, wasn't [4274] it?

A. I deposited all my checks to my personal account, yes.

Q. That is, you got the proceeds of that check, didn't you?

A. That is correct. I testified I applied it to my fees.

Q. Pardon me, Mr. Taylor, you were never interrogated about that check, were you?

Mr. LeSourd: I will object to that as argumentative. He was interrogated a few moments ago, and said he applied it to his services.

The Court: Well, the objection is overruled.

Q. (By Mr. Griffin): You were never interrogated until just now about this check, Exhibit A-117, were you?

A. I don't remember of it, no.

Q. You were interrogated and testified about a check for one hundred and fifty dollars and fifty

(Testimony of L. Hicks Taylor.)

dollars and seventeen cents, which you referred to?

A. Yes, all the checks I received I earned, don't forget it.

Q. The $64.57 check you did not account to to Mr. Forster, did you, Mr. Taylor?

A. I had the approval of Mr. Brehm. [4275]

Q. Which Mr Brehm is that, please, Mr. Taylor?

A. Mr. Brehm was the partner in this company.

Q. His name is what?

A. Edward Brehm.

Q. Edward Brehm approved your drawing——

A. (Interposing) They both knew; they both knew.

Q. Just a moment, Mr. Taylor. Edward Brehm approved your drawing this check and depositing it to your personal account, did he?

A. Sure.

Q. At the time it was drawn?

A. I would say so.

Q. Your relationship with Mr. Forster, Mr. Taylor, from your first acquaintance until at least April, 1950, was one of close personal confidence, wasn't it?

A. Very close, until the 21st of April.

Q. And even he knew——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): After you had pled guilty to income tax evasion, you knew Mr. Forster advised with your parole officer, didn't you?

A. Yes, I knew it. [4276]

Q. And still asserted his whole belief in you?

(Testimony of L. Hicks Taylor.)

A. Until the 21st day of April. We had words the 21st day of April coming from Conway.

I have had "How do you do" with Mr. Forster since the 21st day of April, supposedly, and published as a best friend and trusted financial adviser in the newspapers, but when Mr. Kachlein got ahold of him, I have not heard from Mr. Forster since.

Q. You were Mr. Forster's trusted and best friend and financial adviser, weren't you?

A. It must have been fine when he wouldn't get in touch with me after the 21st day of April.

It must have been very close.

Q. I am inquiring down until the date you gave, April 21, 1950; until that time you were the close, personal adviser and friend of Hans Forster and he of you, isn't that true?

A. How does poison spread so fast? The 21st day of April we left each other friends, and we have not had over three words since that time, because his mind was poisoned by my former attorney.

Q. My question is, Mr. Taylor——

A. (Interposing) I am answering what actually happened.

The Court: If you will listen to the question, and [4277] then you may answer.

The Witness: All right. I apologize to you, Judge.

Q. (By Mr. Griffin): My question is, Mr. Taylor, until the date that you fix, April 21, 1950, you and Mr. Forster were the closest of personal friends, and you as his chief adviser?

(Testimony of L. Hicks Taylor.)

That is true, isn't it?

A. I was his accountant, not his chief adviser. There were others who took part with Mr. Forster in the advice of his affairs.

Q. Were you very close friends?

A. We were not close social friends at all.

Q. Were you close business friends?

A. We were fairly close business friends, yes.

Q. And going back now to my original question: you knew that he had conferred with the parole officer, your parole officer, after you had pled guilty and still asserted faith that you weren't wilfully at fault, didn't he?

A. Yes, and he was truthful.

Q. And, Mr. Taylor, even after the investigation started upon Mr. Forster's books that had been maintained by you, you are aware of the fact that Mr. Forster [4278] asserted to the Revenue Agents that he did not believe that you could be guilty, didn't he?

Mr. Moriarty: Objected to as not proper cross-examination and hearsay.

Mr. Griffin: It was testified to by the Revenue——

The Court: (Interposing) Objection overruled.

A. Why didn't he contact me?

Mr. Griffin: I will reach that eventually, but may I have the question read, please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

(Testimony of L. Hicks Taylor.)

A. (Continuing) That was never repeated to me.

Q. (By Mr. Griffin): You heard the testimony in the courtroom in that regard?

A. I don't believe so.

Mr. Moriarty: Object to the form of the question, if your Honor please, not proper cross-examination.

The Court: Objection sustained.

Q. (By Mr. Griffin): During the years——

Mr. Griffin: Strike that. [4279]

Q. (By Mr. Griffin continuing): You considered Mr. Forster as a single client, didn't you, Mr. Taylor? A. I did not.

Q. You considered him as a single client in this sense, that he was the Alpine Dairy?

A. Correct.

Q. That he was sole owner of Issaquah Creamery? A. Correct.

Q. That Simonson and Forster was one of his enterprises?

A. He did not control that. Mr. Simonson was the one that operated that.

Q. My question was, you considered Simonson and Forster as one of his enterprises?

A. One of the eight enterprises, yes.

Q. One of the eight: Renton Ice and Ice Cream Company? A. Yes.

Q. Apex Farms? A. Yes.

Q. Arctic Gardens? A. Yes.

Q. Utgard—Finstad and Utgard?

A. Yes.

(Testimony of L. Hicks Taylor.)

Q. You considered, did you not, that Mr. Forster—that [4280] you were representing Mr. Forster, who had eight separate entities of which he was the sole proprietor of some and substantially interested in the others? A. That is right.

Q. And during the years 1945 to 1949, you were paid slightly in excess of five thousand dollars a year for the services that you rendered, weren't you?

A. Probably it averaged about forty-five hundred dollars, as I remember it.

Q. Did you ever average it, Mr. Taylor?

A. I don't know that I ever did.

Q. Would you say that it did not average slightly in excess of five thousand dollars a year for those years, considering Washington Athletic Club dues?

A. It is possible it did. I don't remember. I saw it once here, but I have forgotten what the figures were.

Q. Before the split-off of Alpine, you were making separate profit and loss statements and the balance sheet for Alpine as operated by Issaquah as well as separate balance sheets for Issaquah and profit and loss statements, weren't you?

A. I was making one balance sheet and displayed the operations of Issaquah and Alpine Dairy separately. [4281]

Q. Yes; which would be the same situation if you had displayed it upon different sheets, wouldn't it, as far as work was concerned?

(Testimony of L. Hicks Taylor.)

A. Oh, hardly.

Q. At the time of that separation, did you advise Mr. Forster that Mr. Erickson could handle the journal at Issaquah?

A. He was handling it.

Q. I am referring to the journal for Alpine.

A. He said he could handle it, yes, Mr. Forster did.

Q. I am asking you if you said he could?

A. I approved that he could, because I knew that he could.

Q. Mr. Taylor, will you tell the Jury what Mr. Forster knew about a journal?

A. Quite a little.

Q. What?

A. He used to look it over quite often.

Q. You didn't have the journal, did you?

A. No, the journal was out at Issaquah. I had the ledger.

Q. You had the ledger, yes.

A. I had the ledger, but the journal was at Issaquah. [4282]

Q. What did he look at in the journal?

A. I don't know. I have seen him look at the journal with Harold.

Q. And do you know what they were looking at?

A. I don't know; I never checked into it.

Q. You were never curious what he was looking at?

A. It didn't make any difference to me.

(Testimony of L. Hicks Taylor.)

Q. How many times in twenty years did you ever see Mr. Forster look at the journal?

A. Oh, four or five times.

Q. That would be when you were there?

A. Yes, he might have looked at it a lot when I wasn't there. I don't know. [4283]

* * * * *

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination—(Continued)

Mr. Griffin: Will you mark this, please?

The Court: Defendants' Exhibit A-118 marked for identification.

(Defendants' Exhibit A-118 marked for identification.)

Mr. Griffin: If the Court please, I offer in evidence *Court's* Exhibit A-118 which is a certified copy of a deed from Hans and Evelyn Forster to Frank L. Morris, dated January 25, 1946. This is in connection with the previous morning's testimony.

Mr. LeSourd: We make the same objection, your Honor, we did when this other testimony on this transaction came in; irrelevant and immaterial, and improper cross-examination.

The Court: That objection may show. There is no objection so far as the identification goes.

Mr. LeSourd: No, no objection on that.

(Testimony of L. Hicks Taylor.)

The Court: Objection overruled, and the Exhibit, 118, may be admitted. [4290]

(Defendants' Exhibit A-118 admitted in evidence.)

Mr. Griffin: I would ask if it would be stipulated, to save showing proof, that in the year 1946 the required revenue stamps upon a deed by the Federal Government were $1.10 a thousand, and by the State of Washington, $1.00 a thousand?

Mr. Cox: That is the current rate.

Mr. Keesling: I think it is $1.05.

Mr. Griffin: Very well.

Mr. Cox: We can ascertain that.

The Court: May we proceed on that stipulation with the understanding that if upon further check that is not correct, we can amend the stipulation?

I take it, Mr. Griffin, you have checked it?

Mr. Le Sourd: Have you personally checked it?

The Court: Is that agreeable to proceed on that basis?

Mr. LeSourd: I don't believe so, your Honor.

Mr. Griffin: All right.

May I describe A-118 to the Jury, if the Court please? It is a warranty deed from Hans and Evelyn Forster to Frank L. Morris. The stated consideration [4291] is ten dollars. The deed is—the Notary upon the deed is L. Hicks Taylor. The deed bears documentary stamps, State of Washington, ten dollars, five dollars, fifty cents, and of the

(Testimony of L. Hicks Taylor.)

United States Government, ten dollars, five dollars, two dollars, five cents.

Q. (By Mr. Griffin): Mr. Taylor, are you still unaware of the requirement of documentary stamps upon a deed in the year 1946, both Federal and State?

A. You are asking me if I know the rates?

Q. Yes, I am asking if you are still unaware of the rates?

A. I am not aware of the rate.

Q. You purchased the stamps for the deed, didn't you, Mr. Taylor?

A. I am afraid not, as I remember it.

Q. Did you take the acknowledgment?

A. I took the acknowledgment, yes.

Q. And you prepared the deed, Mr. Taylor?

A. In all probability. I might examine it to be sure.

(Whereupon, there was a brief pause.)

A. (Continuing) Yes, I prepared this deed, but I had nothing to do with the Revenue Stamps.

Q. Were the Revenue Stamps on the deed when you [4292] took the acknowledgment?

A. They were not. If you will notice, that is filed at the request of F. L. Morris.

Q. He was the purchaser?

A. He filed it, and he took it to the court house, and he bought the stamps.

Q. And you represented both Mr. Morris and Mr. Forster?

(Testimony of L. Hicks Taylor.)

A. But I did not buy the stamps, and I did not record the deed.

Q. Ordinarily, the purchaser records the deed, doesn't he, Mr. Taylor?

A. Yes, and ordinarily he buys the stamps, too.

Q. Sir?

A. Ordinarily he buys the stamps.

Q. The purchaser ordinarily buys the stamps

A. In this particular case, yes.

Mr. Griffin: Let me see A-16, please?

(Whereupon, document was handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): I understand that went you went out to Issaquah, you were supplied a tape, of which A-16 is one of the tapes supplied, is that right?

A. Yes, this is the tape; A-16, yes. [4293]

Q. And you entered the figure from A-16 into your ledger, your control ledger, is that correct?

A. It is part of the posting, yes.

Q. What other posting is there?

A. There is posting from the journal, as well.

Q. The items on A-16 are taken from the journal, are they not? A. That is correct.

Q. What items are left off A-16 from the journal? A. The control items.

Q. How many were those?

A. Cash, bank, accounts receivable, and accounts payable, and clearing account.

Q. So, your work, as I understand, was to take

(Testimony of L. Hicks Taylor.)

these items off of the tape and post into the journal—— A. (Interposing) Yes.

Q. (Continuing) ——plus these three or four items from the ledger that you have testified to, is that correct? A. That is correct.

Q. And on the same day that you were out there, these were postings of both Issaquah Creamery and Alpine Dairy, is that correct? A. Yes.

Q. And after the acquisition of Alpine Ice Cream [4294] Company, you also did that posting there at Issaquah, did you not? A. Yes.

Mr. LeSourd: Just a moment.

Q. (By Mr. Griffin): So that——

Mr. LeSourd: (Interposing) If your Honor please, the answer came before I could get an objection in. I will move to strike on the ground of improper cross-examination. It is a subject not covered by the direct examination of Mr. Taylor.

The Court: Objection overruled.

Q. (By Mr. Griffin continuing): So that all these hours you spent at Issaquah, you were doing the posting of three of these enterprises, limited to the sort of posting that is shown here, that you just testified to, is that right?

A. The last five months of 1949 included the Issaquah Ice Cream Company,—I beg your pardon, Alpine Ice Cream Company, Incorporated.

Q. And, by posting, you simply meant taking the figures off of this tape and writing them down in your control ledger? That was posting?

A. Posting the general ledger, yes, sir.

(Testimony of L. Hicks Taylor.)

Q. Now, my question is: [4295]

Simply taking the figures off of the tape, for example, A-16, and writing those figures in your ledger, that is posting?

A. I answered "Yes, sir, posting the general ledger."

Q. Your answer is "Yes," is it?

A. I said "Yes, posting the general ledger."

Q. What else did you do at Issaquah Creamery that day?

A. That practically took the day.

Q. It took you the day?

(Whereupon, there was a brief pause.)

Q. (Continuing) It took you the day to post twenty-four items of Issaquah Creamery, and 27 items of Alpine Dairy, plus the journal items you have mentioned to make those entries in the ledger, did it?

A. You have been playing around here with work sheets. You might note some of those work sheets, and see if there was any work on those.

Mr. Griffin: May the question be read, if the Court please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question in two parts was read by the reporter.)

A. (Continuing) Yes, in conjunction with the [4296] work sheets.

Q. (By Mr. Griffin): Did you pay any particular attention in your posting to the second largest item on Exhibit A-16, the sheet headed "Issa-

(Testimony of L. Hicks Taylor.)

quah," the second largest item of $64,263.91, miscellaneous; did you pay any particular attention to that item except to write the figure in your ledger?

A. That is correct. It was posted to the ledger in account No. 9, miscellaneous.

Q. My question is: Did you pay any particular attention to that item except just to write the figure in your ledger, as to what that item contained?

A. I told you what I did. I posted the general ledger to miscellaneous, the account No. 9. That is what you asked me.

Q. My question is: did you pay any particular attention as to what that large item of sixty-four thousand dollars for that month contained?

A. Not beyond the posting.

Q. You testified that you assumed when Mr. Forster gave you the figures of interest, that he was giving you net interest, is that correct?

A. Net interest, yes.

Q. You knew as an accountant that you had, or [4297] the taxpayer had, to enter upon his return, all interest received, didn't you?

A. I believe, if you will read the tax return explanation, you will find that business interest is to be entered in one sum.

Your net receipts and net deductions taken off.

Q. My question, Mr. Taylor, is: That you knew, as an accountant, that the taxpayer must enter all interest received on the tax return, must he not?

A. Interest received, less any business interest paid out. That would be net interest.

(Testimony of L. Hicks Taylor.)

Q. What do you mean, "business interest paid out"?

A. Business interest is interest that is paid toward business obligations. The interest that appears on page 3 of the tax return is interest paid on chattel mortgages, and personal operations within his household.

Q. Mr. Taylor, as of the present, it is even required that the name of the payee of every item of interest be entered on the tax return, isn't it?

A. You are exactly right, for 1950 and 1951, they ask for a listing of who you drew the interest from, yes.

Q. That was the requirement of the total interest [4298] received, not net; gross interest received before the new ruling to make you specify, wasn't it? A. Not necessarily.

Q. I hand you exhibit—Plaintiff's Exhibit 1, which is the individual income tax return for Mr. Forster of 1945, and call your attention to Schedule "B"——

Mr. Griffin: Excuse me a second.

(Whereupon, there was a brief pause.)

Q. (By Mr. Griffin continuing): Under "Deductions"—there is a heading under "Deductions" of interest, isn't there?

A. You are speaking of page 3 of Form 1040. It says, "Interest," yes, sir.

Q. That means that interest that you shall enter there for the taxpayer is the interest he has paid out, doesn't it?

(Testimony of L. Hicks Taylor.)

A. That form is very simple there. This is the computation that calls for the deductions where you do not use the standard deduction. This is interest on personal chattel mortgages, your home, interest on contracts of purchase for furniture and such as that; not business interest.

Q. All right; that is the kind of interest we are talking about, Mr. Taylor.

A. We are not talking of two same interests at [4299] all; one is business interest, and this is for household interest that affects the standard deduction on the tax return.

Q. Now, Mr. Taylor, I am not talking about business interest.

A. That is what I am talking about. It is what I was working with.

Q. Mr. Taylor, I am not talking about business interest. My question is, on page 3, under deductions, the form provides for the deduction of interest to be entered, that has been paid out, doesn't it?

A. As I have explained, you are referring to a different portion of the income tax return, when you refer to the deductions for his personal obligations.

He has a privilege under the Tax Law to take a standard deduction of $500 or list his contributions. His interest, his taxes, his losses from storm, shipwreck, or other casualty, medical and dental expenses. There are two distinct different places to report interest.

Q. Mr. Taylor, when you requested, you say,

(Testimony of L. Hicks Taylor.)

Mr. Forster to give you his itemization of the interest he had paid out, or the interest received, rather, first, you were not referring to business interest received in business, were you?

A. I was referring to his interest earned, and [4300] all his interests as far as I knew was business interest.

Q. Why, then, wasn't it entered upon the books by you?

A. Why wasn't it entered on the books by Mr. Forster, not by me. He ran the books of original entry. I did not.

The Court: Mr. Taylor, I will have to caution you that when questions are put, you are to answer the questions and not to argue with counsel.

The Witness: I apologize, your Honor.

Q. (By Mr. Griffin): Mr. Taylor, you were the accountant making the personal returns for Hans Forster and Evelyn Forster, his wife, were you not?

A. That is correct.

Q. You were the accountant keeping the books of Hans Forster, were you not?

A. I was maintaining the general ledger.

Q. Now, when you asked Mr. Forster for any other items, I believe you said interest, dividends, you were asking Mr. Forster for any items of interest paid to him personally that did not—that had not gone through the business books, weren't you? A. That is correct. [4301]

Q. All right; now, going back to this return that you are making for Mr. Forster, on the first page,

(Testimony of L. Hicks Taylor.)

item 3, entitled "Your Income," "Enter here the total amount of your dividends and interest, including interest from Government obligations unless wholly exempt from taxes.", and, as the accountant for Mr. Forster, making an honest return, you were required to enter all the interest that Mr. Forster had received, weren't you, aside from business interest?

A. If Mr. Forster gave me the interest honestly, it went on the tax return honestly.

Q. Mr. Taylor, you have testified time without number, that you assumed that the interest that Mr. Forster gave you was net.

A. And was the correct interest.

Q. Now, net interest does not mean the total interest received, does it?

A. It could mean the total interest received, less interest paid out.

Q. That would be gross interest, wouldn't it?

A. Gross less paid out interest, would be the net interest.

Q. Mr. Taylor, under item 3 of what you called a "simple return," you were required to enter all interest received by the taxpayer, weren't you?

A. Which was done from their figures furnished to me.

Q. I understood he gave you a single figure, you said, which you considered to be net?

A. That is right. That was the figure he said was his interest, and I took it.

Q. But you knew, as an accountant, or did you,

(Testimony of L. Hicks Taylor.)

that the total interest received, was to be entered on his—on Division 3 of the first page of this return; you knew that, didn't you, or did you?

A. I entered the interest that Mr. Forster gave me as his interest earned.

Mr. Griffin: May that question be read, if the Court please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Q. (By Mr. Griffin): Did you know that?

A. It is entered. The interest given me is entered there.

The Court: Mr. Taylor, the question is: Did you know it?

The Witness: Well, I don't know what his question means—if you know what? What does his [4303] question mean?

Q. (By Mr. Griffin): Did you know that the taxpayer was required to enter upon line 3, under heading "Your Income" interest received?

A. I entered what I received from him, yes. He was the taxpayer.

Q. Mr. Taylor, do you refuse to answer the question?

A. You are confusing the question. You asked me if I entered the interest he gave me, and I said "Yes."

Q. I asked you if you knew, you, personally, Mr. Taylor, knew that the taxpayer was required to enter under the heading of "Your Income," un-

(Testimony of L. Hicks Taylor.)

der subdivision 3, all interest received during the taxable year? A. That is right, yes.

Q. And did you know that under the heading of "Deductions" on page 3, a place is provided for deducting interest paid out?

A. Yes, I have explained that.

Q. Then why, as an accountant for Mr. Forster, did you not advise him that what you wanted and had to enter was the interest received, and the interest paid out, and not net interest? [4304]

A. Mr. Forster gave me a lump sum of interest, sometimes in two figures. Mr. Forster knew what his income was, and could give it to me.

Q. Mr. Taylor, you have stated that Mr. Forster kept the original books of entry. What do you mean by that?

A. His office retained the books of original entry.

Q. To your knowledge, did Mr. Forster ever make an entry in any book of any kind?

A. I don't know that I have any knowledge of it, no.

Q. You have testified, Mr. Taylor, that you never saw A-61 before. That is the statement of assets of Mr. Forster as of January 1, 1947. Is that correct?

A. I so testified, yes.

Q. My question is: this is a photostat, is it not?

A. No, that is the original.

Q. That is the original. How did you happen to have it in your files, Mr. Taylor?

A. I am afraid you didn't——

(Testimony of L. Hicks Taylor.)

Q. (Interposing) That you referred to so much.

A. I am afraid that you didn't find that in my [4305] files.

Mr. LeSourd: If your Honor please, I will ask that the last question and answer be stricken. It is highly improper. Mr. Griffin's question assumed a fact contrary to the testimony of Mr. Forster whose testimony was, as I recall it, that he found this in a bureau drawer, and I think it is highly prejudicial and I move to strike it.

The Court: That is A-61?

Mr. Griffin: I think that is Mr. Forster's testimony. I am agreeable that the question and answer be stricken.

The Court: The last question and answer by Mr. Griffin may be stricken, and the Court will disregard it. I mean, the Jury will disregard it.

Q. (By Mr. Griffin): Mr. Taylor, you rode once a month, on an average, with Mr. Forster to Conway and back from Conway, didn't you, over a period of years?

A. Yes, we were together, probably two hours or two and one-half hours.

Q. Each way?

A. Probably one hour each way. Maybe a little bit longer.

Q. Did you discuss business?

A. Sometimes. [4306]

Q. You didn't discuss any social matters, did you? A. Sometimes.

Q. I thought you were not——

(Testimony of L. Hicks Taylor.)

A. (Interposing) Basketball.

Q. Oh, yes, basketball. Now, speaking of basketball, basketball was one of the advertising methods used by Mr. Forster, wasn't it?

A. Yes, I think so.

Q. Did you advise him that he could charge those advertising items off to expense?

A. I have no recollection of it being discussed.

Q. You just discussed basketball, is that right? Were you interested in basketball, Mr. Taylor?

A. I used to play once in a while when a young fellow.

Q. My question was: Were you interested in basketball, Mr. Taylor?

A. To some extent, yes.

Q. And that was your main subject of discussion with Mr. Forster; it was basketball, was it?

A. Many times.

Q. Quite usually—quite often on these trips, Mr. Forster had slips like A-61 which he discussed with [4307] you, didn't he?

A. It is possible, but I don't have any recollection of them.

Q. Now, I think you stated, Mr. Taylor, that you never saw the milk equalization checks that are in evidence here; is that correct?

A. I have no knowledge of seeing them, no.

Q. You were familiar with the matter of milk equalization, were you not?

A. I was not until this trial started.

Mr. Griffin: Exhibit 280, please.

(Testimony of L. Hicks Taylor.)

(Whereupon, Exhibit was handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): Then why, Mr. Taylor, not being familiar with, I think you said, milk equalization checks, and milk pricing—that is a correct statement of your testimony, is it not?

A. I would like that question read again. I don't follow you on it.

Q. I said, you are not familiar with the milk equalization or with milk pricing, as I understand?

A. Not directly, no.

Q. Then why in one year-end, did you transfer forty thousand dollars on the books on your ledger from [4308] Issaquah Creamery to Alpine Dairy, and another year-end fifty thousand dollars from Issaquah to Alpine Dairy on the basis of milk equalization?

A. Do you have any schedule showing that I performed such a service?

Q. You heard Mr. Eppler's testimony, did you not, sir?

A. I didn't say that I did.

Q. You made the entry in the—in your ledger, did you not?

A. There was no such entry as forty or fifty thousand dollars in any one item in those ledgers.

Q. In any one item; there are four—there are four ten thousand dollar items in the one and five ten thousand dollars in the other, are there not, making forty thousand once and fifty thousand the second time?

(Testimony of L. Hicks Taylor.)

A. I had no recollection of ever seeing such figures in my ledger.

Q. Did you hear Mr. Eppler's testimony in regard to the transfer of figures——

A. (Interposing) He didn't——

Q. (Continuing) ——in that particular?

A. He didn't in any way associate me with them.

Q. Or the ledger? [4309]

A. I don't think he associated the ledger with it, either.

Q. Or the income tax return prepared by you?

Mr. LeSourd: If your Honor please, it doesn't appear to me that this is proper cross examination, to go over what Mr. Eppler testified. If he wants to ask Mr. Taylor what he knows——

The Court: (Interposing) Mr. Taylor is provoking many of these matters by his answers. Therefore, if the answers bring into issue some of these matters, it is proper that they be clarified.

Mr. LeSourd: If your Honor please, he asked if Mr. Eppler testified so and so. He said he did not, as far as he can recall. I don't see how that opens up for argument that which Mr. Eppler testified to. It is certainly not proper cross-examination.

The Court: Well, I agree that some of these matters appear to be argumentative, but likewise, it is provoked, I believe, as much by the witness, if not more so.

(Testimony of L. Hicks Taylor.)

I suggest that the question now be put, and you may proceed.

Mr. Griffin: All right. [4310]

Q. (By Mr. Griffin): Mr. Taylor, in the income tax return prepared by you for Alpine Dairy and Issaquah Creamery, did you reflect a transfer of forty thousand dolars from out of Issaquah to Alpine in the one year, and fifty thousand dollars out of Issaquah into Alpine another year; that is, as income for Alpine and a deduction for Alpine?

A. I had no knowledge of those transactions.

Q. Do you recall the Arctic Gardens check which you said was interest, $773.21?

A. Yes, I remember.

Q. Exhibit 66, or 66-A.

Mr. Griffin: I don't need it.

Q. (By Mr. Griffin continuing): Mr. Taylor, is there any place in your records that you can show that you entered that item as income to Mr. Forster in his income tax return for that year?

A. No, it does not show as an individual item.

Q. Now, at the—as I understand your testimony, you said at this first meeting of the Renton Ice and Ice Cream Company, the first corporate meeting, you were the secretary and treasurer; that is correct, isn't it, of Renton Ice and Ice Cream Company? A. Yes.

Q. You made the arrangement for the salaries as [4311] has been testified here, and I am not going into that in detail again if you have it in mind.

Mr. LeSourd: Object to the statement. He didn't

(Testimony of L. Hicks Taylor.)

testify he made the arrangement. He testified it was agreed to. If he is not going into it, Mr. Griffin shouldn't make such a statement.

Mr. Griffin: I will ask it this way:

Q. (By Mr. Griffin): You have in mind, Mr. Taylor, your testimony in regard to the payment of salaries, do you, at Renton Ice and Ice Cream Company? A. Yes.

Q. I understood you to say that under that arrangement you knew that Mr. Forster was to receive a portion of the salary money paid to Mr. Schneider and Mrs. Baskett, is that correct?

A. That was their agreement, yes.

Q. And that you told Mr. Forster to deposit his payment when he received it into the Alpine Dairy account, is that correct? A. That is correct.

Q. And you told him that the reason for it was so he would not have—so you would not have to identify it on his income tax return; is that correct?

A. On the face of his income tax return, yes.

Q. Well, Mr. Taylor, that was for the purpose, was it, of still retaining Mr. Forster's lack of identity with Renton Ice and Ice Cream Company?

A. That was the intention.

Q. Well, why—the tax return of the taxpayer is confidential as between the taxpayer and the Government of the United States, isn't it?

A. Yes, but he wasn't voted a salary.

Q. And if the name Hans Forster had been written all over the tax return, of the Renton Ice and Ice Cream Company, it still would have been con-

(Testimony of L. Hicks Taylor.)

fidential between the United States Government and the Corporation, wouldn't it?

A. That is possible, yes.

Q. Why did you tell him then—why did you say that you told him, rather, to deposit the money in Alpine so that it would not show on the face—he would not show on the face of a tax return?

A. He was not voted a salary at the Renton Ice and Ice Cream Company.

Q. By the way, you prepared the minutes, did you not, of the Renton Ice and Ice Cream Company of that first meeting? A. I believe so.

Mr. Griffin: May I have the minutes, A-6? [4313]

(Whereupon, Exhibit was handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): You have been the secretary and treasurer of a great many corporations, have you not, Mr. Taylor?

A. The same as with this one, acting to be helpful.

Q. And you have organized many corporations and have prepared the articles?

A. Not very many, no.

Q. And you know that the minutes of a corporation are prepared to speak the truth, do you not?

A. Yes, that is the intention.

(Whereupon, there was a brief pause.)

Mr. Griffin: I am sorry, if the Court please. I thought I had them where I wanted them.

(Whereupon, there was a brief pause.)

Q. (By Mr. Griffin): Referring to Exhibit A-6,

(Testimony of L. Hicks Taylor.)

Mr. Taylor, and the minutes of September 30, 1942, that is your signature as Secretary, is it not?

A. That is correct.

Q. You were also the treasurer?

A. I believe the by-laws combined the two positions. [4314]

Q. And that was an organizational meeting of this—part of the organizational meeting?

A. Well, I didn't read it so that I couldn't tell you what it says.

Minutes of a Special Meeting of the Board of Directors of the Renton Ice and Ice Cream Company is what this calls for.

Q. Under date of——?

A. September 30, 1942.

Q. September 30, 1942, and—which was the same time in the organization that you prepared the list of your directors and officers, September 30, 1942, is that correct?

A. I am a little afraid that Mr. Wettrick performed this service. I did not.

Q. I am referring to the date September 30, 1942, the same date at least——

A. (Interposing) That is the date of the officers, yes.

Q. The minutes, Mr. Taylor, subscribed by you, September 30, 1942:

"The President and Chairman, Mr. Schneider, called attention to the advisability of establishing by resolution the salaries of the officers who are giving all or a portion [4315] of their time to the busi-

(Testimony of L. Hicks Taylor.)

ness interests of the company, and upon motion duly made, seconded and passed, it was resolved that the president be awarded the sum of $500 a month salary, the vice-president $500 a month salary, and the secretary-treasurer, $50 a month salary until the further action of the Board of Directors of the stockholders, and that said salary be made retroactive to the commencement of business of this company.

"There being no further business, the meeting adjourned."

You prepared that minute, didn't you, Mr. Taylor? A. I did.

Q. Then was it a portion of that $500 per month that the arrangement was made that Mr. Forster was to receive? A. That was the agreement.

Q. You knew as the accountant for Mr. Forster that if he received any portion of that money, no matter in what form it was paid, it was income to Mr. Forster, did you not?

A. That is correct.

Q. And you knew, as the accountant for Mr. [4316] Forster, it had to be accounted for as income in his income tax returns, didn't you?

A. And it would have been, if it had been followed out.

Q. My question is: You knew that he had to account for that in his income tax returns, didn't you?

A. And he had proper instructions where to file it, yes.

(Testimony of L. Hicks Taylor.)

Q. And did you ever, as the checks were made, throughout the years, ever check, or inquire, into where that money went and to what account?

A. I don't know that I did.

Q. You didn't feel that you owed any obligation in your relationship to Mr. Forster as his accountant for these enterprises, knowing the arrangement made on the payment of this, to ascertain whether he was accounting for it, or not?

A. I did not, but I didn't assume that Mr. Forster was not obligated to look out for his own, as well.

Q. Did you ever read any tax regulations to Mr. Forster?

A. I probably have read considerable to him.

Q. Can you tell us one that you read to him?

A. I don't know, offhand, no.

Q. Did you ever read any yourself?

A. Well, I recollect I have, yes.

Q. During these years? A. Yes.

Q. As a matter of fact, in the arrangement that —you approved this arrangement, as the accountant for Mr. Forster, for the Renton Ice and Ice Cream Company, didn't you?

A. I was present; I believe it was approved, yes. It was approved by all four present.

Q. And that included you?

A. It included me, I was a director, yes.

Q. Mr. Taylor, you told Mr. Schneider to purchase bank checks with which to make the payments to Mr. Forster, didn't you?

(Testimony of L. Hicks Taylor.)

A. I believe I heard him testify to such a statement, which is very much untrue. That was his own decision.

Q. Now, my question is:

You instructed Mr. Schneider to purchase cashier's checks, didn't you? A. I did not.

Q. (Continuing) To make these payments?

Was it you, Mr. Taylor, that advised Mr. [4318] Forster that Mr. Simonson was taking an additional $100 a month?

A. I believe Mr. Forster testified to that, and I assume it was probably true.

Q. I think you have testified time without number that you were not interested in Mr. Forster's personal affairs; is that correct?

A. Do I understand that question? What was it, again?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) No.

Q. (By Mr. Griffin). Why did you tell Mr. Forster that Mr. Simonson was taking an additional $100 a month?

A. My recollection is that the company was showing a loss, and I thought it should be discussed a little, as the salaries were too great for what the business would stand.

Q. As a matter of fact, each month the company showed a small profit, didn't it?

A. Sometimes, but very small, at times.

(Testimony of L. Hicks Taylor.)

Q. It showed a yearly profit during each year, and never a loss? [4319]

A. After I restored the $1200, it did one year, to the profit.

Q. Was there any year that Simonson and Forster was not actually operating at a profit?

A. They would have been at a loss if Mr. Forster's salary had not of been restored in 1948.

It showed a slight profit after the $1200 was restored.

Q. You were quite, then, familiar with this $1200 item, weren't you, Mr. Taylor?

A. Yes.

Q. And you knew that Mr. Forster received that $100, $100 each month of the 12 months of each year, didn't you?

A. Yes, of 1948 and 1949, I knew.

Q. Yes; and you knew that no matter what you did as far as bookkeeping was concerned, that that $100 that Mr. Forster was receiving was income to Mr. Forster for the year in which it was received, didn't you?

A. Not the way it was handled. It was not income, and it was not Mr. Forster's desire to pay a tax on it.

Q. Mr. Taylor, as an accountant, was it your opinion that you could handle something that was money received as income—handle it so it ceased to be income?

A. Well, if you understood the association of

(Testimony of L. Hicks Taylor.)

Simonson and Mr. Forster, you would understand that [4320] situation.

Q. Mr. Taylor, if Mr. Forster received $100 a month from Simonson and Forster, once each month for twelve months in the year 1948, even if he returned that full $1200 in the year 1949, you knew, as an accountant, it was still income for the year 1948, didn't you?

A. It was not so treated.

Q. Oh, I am not asking you how you treated it, sir.

A. You heard me—you heard me testify as to why it was treated—restored to profit; because of the financial condition of the company, Mr. Forster and Mr. Simonson had to return money to the company so that was the reason it was not reported as income on Mr. Forster's tax return.

Q. Mr. Taylor, I am not asking or inquiring how you treated the matter. My question is:

That you, as an accountant, knew that when Simonson and Forster paid $100 a month, once each month, in the year 1948 to Hans Forster, even if he returned it all in 1949, it was still income, reportable income in the year 1948, wasn't it?

A. No.

Q. Do I understand that you can take a client's income, treat it—by "income," I mean cash money [4321] received—treat it, and it ceases to be such? Is that your philosophy in accounting?

A. I would say not.

Q. Also, in connection with Simonson and Fors-

(Testimony of L. Hicks Taylor.)

ter, you made the statement "I was not keeping his books." Do you recall that, referring to Mr. Forster? A. That is correct.

Q. You opened the Alpine office, didn't you?

A. That is correct.

Q. You employed Mrs. Wilcox, didn't you?

A. With Mr. Forster's approval, yes.

Q. You knew that Mrs.—Miss Wilcox kept no books as to accounts payable at Alpine, didn't you?

A. That is correct.

Q. You arranged it that way, didn't you?

A. Because Mr. Forster wanted the distribution done in Issaquah.

Q. My question is:

You arranged the accounting system that way, didn't you?

Mr. LeSourd: He answered the question. It is argumentative.

Mr. Griffin: I am not arguing anything.

The Court: Objection overruled. [4322]

Q. (By Mr. Griffin continuing) You arranged the accounting system that way, didn't you, Mr. Taylor?

A. No, the accounting system was in Issaquah, and this became a branch.

Q. It became a branch?

A. Yes. I arranged the accounting system for the branch, if that is the question you want answered that way.

Q. And while you were not keeping—using that term—keeping Mr. Forster's books, you were su-

(Testimony of L. Hicks Taylor.)

pervising the keeping of Mr. Forster's books, weren't you?

A. I was keeping the general ledger.

Each person in the office was in charge of that office.

Q. Mr. Taylor, during the years in question, were you supervising the bookkeeping system of Mr. Forster in his enterprises?

A. I was maintaining the general ledger, and giving whatever assistance to the heads of the offices that I could. I was not supervising any individual, or had any authority over any individual.

Q. My question is:

Were you supervising the bookkeeping system and set-up of the Hans Forster enterprises? [4323]

Mr. LeSourd: Object to it, your Honor, as argumentative. He has answered the question.

The Court: Well, if the witness says that it is the best answer that he can give, that is satisfactory. Is that your answer?

The Witness: Yes, sir.

Mr. LeSourd: It is a perfectly full and adequate answer, your Honor. It don't want any implication it is not.

The Court: I don't question it. It is for the Jury to determine whether or not he answered the question.

Mr. Griffin: It is recess time.

The Court: Ladies and Gentlemen of the Jury:

We will now take the mid-morning recess. The Court calls your attention to the admonition given

(Testimony of L. Hicks Taylor.)

you on similar occasions, and asks that you heed it on this occasion.

You may now be excused.

(Whereupon, the Jury retired from the court room.)

Whereupon, at 11:01 a.m. a recess was had in the within-entitled and numbered cause until 11:16 o'clock a.m. April 21, 1954, at which time, counsel and defendants heretofore noted being present, the following [4324] proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all defendants are present in the court room?

The Court: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: A-51 and A-52, please?

(Whereupon, Exhibits were handed to Mr. Griffin by the Clerk.)

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Taylor, you made the statement, I believe, that the Renton checks—that is, referring to these cashier checks—were part of Hans' bookkeeping. What do you mean by that?

A. The cashier's checks—am I right?

Q. The cashier's checks—that is, the checks that Mr. Schneider obtained and paid to Mr. Forster?

(Testimony of L. Hicks Taylor.)

A. Yes; that would be part of Mr. Forster's bookkeeping.

Q. What bookkeeping did Mr. Forster have that you did not supervise, Mr. Taylor? [4325]

A. All his personal, except the Alpine Dairy.

Q. Did you consider, when you were making income tax returns for Mr. Forster, which included the Alpine Dairy, that it included everything of Mr. Forster?

A. No. Mr. Forster was to present me with all his other earnings outside of the Alpine Dairy.

Q. Did you ever discuss and try to help him think what those earnings might be?

A. I think in the early years, I gave him considerable instructions in it.

Q. The thing got big, and in the latter years, you gave him none, is that right?

A. Well, I doubt—I may have given him some, but if at any time I did not, I did not figure that he had any outside activities besides his Alpine Dairy and these eight companies.

Q. You were quite familiar with all his activities, weren't you?

A. Not his personal activities, no.

Q. Several times in your testimony, Mr. Taylor, you have referred to, I think, being a public accountant and handing the books, or the ledgers, of small businesses, is that correct?

A. That is correct, yes.

Q. Isn't this the actual fact in this situation, [4326] Mr. Taylor:

(Testimony of L. Hicks Taylor.)

That this—these enterprises of Mr. Forster in the '40's became big business—sales up to eight million dollars—and isn't this the fact, that it just became a little too big for you to handle?

A. No, I followed the same system.

Q. You followed the same system for a business grossing eight million dollars a year that you followed for one of fifty thousand dollars, didn't you?

Mr. LeSourd: Object to the form of the question, your Honor.

There is no testimony it grossed eight million. I think counsel is referring to all eight.

Mr. Griffin: I am. The record shows eight million dollars in sales.

Mr. LeSourd: Well, don't say "business"; it is businesses. I will object to the form of the question as assuming eight million for one business.

The Court: The reporter will read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: It appears to be business. If it is understood that this covered all——

Mr. Griffin: (Interposing) The witness has testified, if the Court please, he considered Hans Forster [4327] the client, and that these eight separate businesses—I am speaking upon that basis——

The Court: (Interposing) You may proceed. So modified——

Mr. LeSourd: (Interposing) Well, if it were modified for several businesses, I don't know what that does to the question.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Griffin continuing) It is a fact that you treated the Hans Forster enterprises grossing eight million dollars a year in the same way that you handled the accounting for a business grossing fifty thousand a year, isn't it?

A. No.

Q. And what difference did you——

A. (Interposing) Mr. Forster—the interests of Mr. Forster were all separate and distinct. Each operation increased its internal operations to cover the increase in the volume of business. My operations didn't increase.

Q. And wasn't another trouble with this—these enterprises that for example, Issaquah was selling in large sums to Alpine, the sole proprietor, and it was the matter of the accounting between Mr. Forster, as an individual and Issaquah in which he owned all the stock? [4328]

A. Yes, and it was a simple operation, one customer buying from another.

Q. It was one customer buying from another, but it was the same individual in the end that was being taxed, wasn't it?

A. I didn't consider it so, no.

Q. I realize that.

A. One is a corporation, and the other is an individual operation.

Q. And Finstad and Utgard was a large seller to Apex Farms?

A. Yes, as far as I recollect, yes.

Q. In other words, while Mr. Forster was an

(Testimony of L. Hicks Taylor.)

individual in one of these enterprises—and it was a large one, wasn't it, Alpine?

A. Alpine was a large operation, yes.

Q. Sales around three or four million?

A. Somewhere in that neighborhood.

Q. Issaquah, in which he owned all the capital stock, was a large operation, wasn't it?

A. Yes.

Q. And Finstad and Utgard, of which he owned all the capital stock was a fairly large operation, wasn't it? [4329]

A. It was a modest operation, yes.

Q. And with these others, actually you had a situation where Mr. Forster was doing business with himself, didn't you?

A. No, I think a corporation that is organized has a separate entity and should be handled as a corporation and separate.

Q. I am not questioning that. In other words, these matters gave you no trouble or concern, Mr. Taylor, as far as a true statement of income taxes were concerned, regarding Mr. Forster; is that correct?

A. Yes; the ledgers were reporting the income tax return as I received the information.

Q. I say, these matters gave you no particular concern?

A. When you say "matters," do you mean as between one corporation and another?

Q. The interlocking of income and expenditures between the various corporations and Mr. Forster

(Testimony of L. Hicks Taylor.)
individually gave you no particular concern from a bookkeeping standpoint?

A. No, because they had bookkeepers, in each of those places, who could certainly keep those things in order.

Q. Do you recall the testimony of Miss Neukirchen [4330] that she consulted with you, worried because at a certain stage, ice cream sales were not being entered upon the books?

Mr. LeSourd: Object to that, your Honor, and ask that the question be stricken. It is an improper statement. Her testimony was not to that effect at all. She merely testified, as I recollect it, and we have the transcript, that she mentioned the extra work that she was going to do on account of the O.P.A.

The Court: I think the question might be formed differently. Objection sustained.

Q. (By Mr. Griffin continuing): Do you recall the testimony of Miss Neukirchen?

A. Yes, I remember it.

Q. That she complained to you, did she not, that certain sales were not being entered upon the books?

A. I do not have any recollection of that.

Q. Do you recall her testimony?

A. I recall her testimony.

Mr. LeSourd: I will move to strike this whole line of questioning on the ground it is improper reference to testimony, that she did not so testify and Mr. Griffin is improperly quoting her testimony.

(Testimony of L. Hicks Taylor.)

The Court: Well, if there should be any question [4331] about it, the Court will again instruct the Jury that any question by counsel is not evidence, and the statement itself might not be evidence.

Q. (By Mr. Griffin): Do you recall Miss Neukirchen making the statement to you, in substance and effect:

"I didn't like it."?

A. I do not recall her statement.

Q. Do you recall that you said to her that she was to follow instructions?

A. I do not have any recollection of that discussion in any way.

Q. Now, with reference to Finstad and Utgard, as I understand your testimony, you as the accountant approved the set-up by which Finstad and Utgard or checks from Finstad and Utgard, to Egeness, were used in payment to Mrs. Finstad for her stock; is that correct?

The Witness: I would like to have that question read again.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. That was the agreement, yes. [4332]

Q. (By Mr. Griffin): Those payments to Mrs. Finstad for her stock was the stock being purchased by Mr. Forster, wasn't it?

A. Not according to the agreement, no.

(Testimony of L. Hicks Taylor.)

Q. You were very familiar with that matter, were you not, Mr. Taylor?

A. The books display exactly what happened.

Q. Mr. Taylor, certain stockholders, Grant and another, and Egeness, and eventually Grant and Egeness had entered into an agreement to purchase the stock of Mrs. Finstad, didn't they?

A. As I remember it, yes.

Q. Mr. Forster entered into an agreement with Grant and Egeness to purchase all of their stock and take over their contract to purchase Mrs. Finstad's stock, didn't they?

A. That is as I understood it, yes.

Q. All right; so, Mr. Forster was acquiring all the stock in Finstad and Utgard, wasn't he?

A. No. The records show that Mr. Egeness was paying for some of that stock.

Q. I am not asking you about how you kept any books, Mr. Taylor. You had possession of all the original documents in the Finstad and Utgard deal, didn't you? A. No. [4333]

Mr. Griffin: Will you mark this, for identification, please?

The Clerk: Defendants' Exhibit No. A-119 marked for identification.

(Defendants' Exhibit No. A-119 marked for identification.)

Q. (By Mr. Griffin): You handled the details of Mr. Forster's purchase in Finstad and Utgard, didn't you, Mr. Taylor? A. I did not.

Q. Handing you Exhibit A-119 for identifica-

(Testimony of L. Hicks Taylor.)

tion, I will ask you if that is not a letter from Mr. Carl Croson to Finstad and Utgard, to your attention, dated March 28, 1945; that is a copy?

A. This letter——

Q. (Interposing) I am just asking what it is.

A. It is a letter addressed to Finstad and Utgard, Incorporated, Mt. Vernon, Washington, attention Mr. L. Hicks Taylor, accountant.

Q. You received that?

A. I am not positive that I ever had that letter in my possession.

Q. Not positive that you ever had the original of this letter in your possession?

A. No, I am not positive that I ever did. [4334]

Q. I will ask you if there was not forwarded to you the items shown in this? Now, for the purpose of refreshing your recollection, there was not forwarded to you the items specified in Exhibit A-119 for identification?

Mr. LeSourd: I suggest, your Honor, that the letter be put in evidence prior to that. We have no objection to it.

Mr. Griffin: If there is no objection—I didn't assume identification was complete.

Mr. Moriarty: We have no objection if Mr. Taylor doesn't object.

The Court: Mr. Keesling, you have no objection?

Exhibit A-119 may be admitted, there being no objection.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-119 admitted in evidence.)

Q. (By Mr. Griffin continuing): Now, Mr. Taylor, this is on—A-119 is on the letterhead of Croson, Johnson & Wheelon, March 28, 1945, Finstad and Utgard, Incorporated, Mt. Vernon, Washington, Attention: Mr. L. Hicks Taylor, Acccountant.

"Dear Sir:

"Enclosed you will please find the following:

"Quit Claim Deed from Peter K. Utgard, a bachelor of New Richmond, Wisconsin."

"2. Statutory Quit Claim Deed from Mary Finstad to Finstad and Utgard, Incorporated."

With explanations of what the deeds are.

"3. A bill of sale * * *"

"4. A recorded deed * * *"

from other parties involving other parties.

"5. An old tax receipt * * *"

"6. Photostatic copy of payment of taxes in the year 1927 paid by Finstad and Utgard."

"7. A Quit Claim Deed from Mary S. Finstad, a widow, to Finstad and Utgard,Incorporated" * * * correcting another deed.

"8. Copy of the Decree entered in Skagit County * * *"

"9. You will also please find a statement from Mary Finstad dated August 1, 1943, that James Cook, W. S. Grant, John Roberts and Vern Egenes had paid her $13,000 on their contract to purchase the stock of Finstad and Utgard, Incorporated."

"10. Receipt from Mary Finstad dated August

(Testimony of L. Hicks Taylor.)

1, 1943, that the total amount due on the contract of sale for all the stock of Finstad and Utgard, Incorporated, dated the 3d day of December, [4336] 1941 was $27,000 as of July 1, 1943."

"11. A receipt * * *"

"12. I also hand you various papers in connection with the various freezers purchased by Issaquah Creamery Company. While I do not anticipate that you will need these, I hand them to you to place in your files.

"I still hold as escrow holder under escrow dated February 8, 1941, stock certificates numbered 21 to 29, both inclusive, of the capital stock of Finstad and Utgard, Incorporated, to be delivered to Mr. Hans Forster upon the payment of the remaining balance of the contract of purchase of the stock from Mary Finstad.

"The original of the Minutes of the meeting of the Board of Directors on June 26, 1944 were delivered to Hans Forster with the original of the Waiver of Notice, and the resignation of J. D. Roberts, W. S. Grant and Vern B. Egenes as treasurer.

"13. I hand you herewith two of the old Minutes Books—" and describing them.

"I am retaining the Stock Book in my possession until I close the escrow. When Mr. Forster has paid Mrs. Finstad the balance due on her contract, I will then deliver the endorsed stock certificates to Mr. Forster. [4337]

"I am assuming that you are taking care of the

(Testimony of L. Hicks Taylor.)

current minutes for the corporation. If you wish my help in this, please let me know as I have assumed no responsibilities without instructions.

"A copy of this letter is being sent to Mr. Hans Forster, care of Issaquah Creamery Company, Issaquah, Washington.

"Yours very truly,

Croson, Johnson and Wheelon."

"P.S. This closes the obligation of Messrs. Grant, Egenes, Cook and Roberts, and the balance of the purchase price to them may now be paid."

Does that refresh your recollection that you received these documents?

A. It refreshes my recollection completely. Those documents were mailed to Mt. Vernon. They were given to Mr. Forster and he took them to Issaquah, and I think before he took them to Issaquah, that I looked some of them over, and I may have later had some of them in my office, but that letter was mailed to Mt. Vernon, not to me. I probably had, possibly, some of those documents, but the whole package was not delivered to me in its entirety.

Q. Then Mr. Forster was purchasing Mrs. Finstad's stock, wasn't he? [4338]

A. That was the original agreement, yes.

Q. He was purchasing the Egeness stock, and Grant stock, wasn't he?

A. That was the intention, yes.

Q. And that constituted all the stock of the corporation, didn't it?

(Testimony of L. Hicks Taylor.)

A. Except the agreement between Mr. Forster and Egeness and myself.

Q. Where did you ever get the idea, Mr. Taylor, that there was a separate agreement between Mr. Egeness and Mr. Forster?

A. Well, it was made in my presence.

Q. As I understand your testimony, Mr. Egeness was buying stock from Mr. Forster, is that right? A. That is correct.

Q. All right; Mr. Egeness was selling his interest to Mr.—his interest to Mr. Forster for a balance of thirteen thousand dollars under the agreement referred to in Exhibit A-119, wasn't he?

A. It was completely paid for.

Q. I didn't ask you that.

A. Yes; it was completely paid for.

Q. He was selling his stock for thirteen thousand dollars, and I understand, according to your testimony, a separate agreement was made in your presence by which [4339] Mr. Egeness was buying that same stock back from Mr. Forster for twenty-six thousand dollars, is that right?

A. That is my understanding.

Q. Well, irrespective of what they were doing, irrespective of your understanding, the fact is that the money paid out of Finstad and Utgard to Mr. Egeness and paid by Egeness to Mrs. Finstad was income to Mr. Forster, wasn't it?

A. No. The records show that Mr. Egeness paid the tax on that money and it was set up as a salary on the corporate records.

(Testimony of L. Hicks Taylor.)

Q. I am not asking you anything about what you did on the records, Mr. Taylor. The fact is, even under your statement, that Egeness was buying stock from Mr. Forster, wasn't it?

A. He was buying a share of the contract, yes.

Q. Oh, he was buying a share of the Finstad contract?

A. I understood he was buying twenty-five per cent of that contract, of the stock in escrow, of Mrs. Finstad.

Q. Now, as a matter of fact, Mr. Taylor, there was no such agreement suggested or made in your presence or out of your presence between Mr. Forster and Mr. Egeness, was there?

A. Yes, there was. [4340]

Q. It was a device set up in your mind to explain how you carried your ledger, wasn't it, and didn't show income? A. It was not.

Q. Mr. Taylor, is it physically possible to have a minus inventory?

Mr. LeSourd: Object to that, your Honor, as irrelevant and immaterial, and improper cross-examination. Counsel attempted to go into this matter when Mr. Gorans was on the stand, I believe, and your Honor ruled at that time it was irrelevant, and it is still irrelevant and not covered in any examination in chief, and not a proper part of the cross-examination.

The Court: What does this relate to, Mr. Griffin?

Mr. Griffin: It relates to the accounting of Mr. Taylor, these work sheets that he refers to. It re-

(Testimony of L. Hicks Taylor.)

lates to the testimony that there cannot be a minus inventory. It is a physical impossibility, and I propose to show that Mr. Taylor, from time to time, carried minus inventory as a bookkeeping device, which is a physical impossibility.

Mr. LeSourd: I might refresh your Honor's recollection. These involved not year-end matters, at all, but matters within the year which your Honor ruled [4341] were irrelevant when offered prior to this time.

Mr. Griffin: I am not showing——

The Court: (Interposing) It has relation to entries made by this—by Mr. Taylor?

Mr. Griffin: Yes, your Honor.

The Court: The Court will overrule the objection.

Q. (By Mr. Griffin continuing): Mr. Taylor, is it physically possible in bookkeeping practice, to have a minus inventory? A. No.

Q. You, however, in your bookkeeping set-up of Issaquah Creamery, carried minus inventory from time to time, didn't you?

Mr. LeSourd: Just a moment, Mr. Taylor. Same objection.

The Court: Objection overruled. A. No.

Mr. LeSourd: Your Honor, may I have a continuing objection to this or does your Honor desire me to raise it each time?

The Court: You mean matters relating to a minus inventory?

Mr. LeSourd: Yes. [4342]

(Testimony of L. Hicks Taylor.)

The Court: You may have a continuing objection.

Mr. LeSourd: Yes, on the grounds just previously stated.

The Court: Yes, on the grounds it is beyond the scope.

Mr. LeSourd: And it is irrelevant and immaterial and improper cross-examination.

The Court: You may have a continuing objection.

Q. (By Mr. Griffin): Mr. Taylor, I hand you A-51 for identification and ask you what that is?

A. There should be a sheet attached to this. This is Issaquah Creamery Company, trial balance, and work sheet of March 31, 1949.

Q. By "work sheet", you mean it is your work sheet?

A. It is my work sheet, and my handwriting.

Q. And handing you A-52 for identification, I will ask you what that is?

A. This is a work sheet of April 30, 1949, in my handwriting.

Mr. Griffin: Will you mark this for identification?

The Clerk: Defendants' Exhibit A-120 marked [4343] for identification.

(Defendants' Exhibit A-120 marked for identification.)

Q. (By Mr. Griffin): Handing you A-120 for identification, Mr. Taylor, I will ask you if that is one of the tapes comparable to A-16?

(Testimony of L. Hicks Taylor.)

A. Yes; this is a tape, March 31, 1950.

Q. And your handwriting is on it?

A. I find a few notations here. There is no other handwriting of mine on it.

Mr. Griffin: I offer A-51.

Mr. LeSourd: If your Honor please, we raise the same objection to A-51. Your Honor previously rejected it when offered for the same purpose it is now being offered.

Its admissibility is even less proper now in view of the fact that this a matter entirely outside the direct examination. Your Honor rejected it before because it was irrelevant, and it is still irrelevant.

Mr. Griffin: The rejection before, if the Court please, was not objected to. That was in regard to direct examination of a witness.

Now, we are on cross-examination of a witness's [4344] own documents.

Mr. LeSourd: Certainly there was nothing in the direct examination that made this any more relevant than it was before, your Honor.

The Court: I understand, Mr. LeSourd, your theory. The Court has indicated before, on cross-examination with this witness, matters relating to the books which he kept I have permitted a larger scope, and I am inclined to overrule the objection, without knowing specifically what the matter is. It possibly might be irrelevant but I would overrule the objection. It may be admitted.

(Defendants' Exhibit A-51 admitted in evidence.)

(Testimony of L. Hicks Taylor.)

The Court: There is one question, however, about this March 21, 1950.

Mr. Griffin: I haven't offered that, yet. This is 1949.

The Court: That is within the period. Exhibit A-51 may be admitted.

Q. (By Mr. Griffin): Now, handing you A-51, Mr. Taylor, there have been some writing over of figures in A-51, a change of figures?

A. Possibly some adjustment, yes. [4345]

Q. Before the adjustments, what does A-51 show as to inventory on hand, Issaquah Creamery Company, March 31, 1949?

A. Is this the one you are referring to (indicating)?

Q. No; I am just asking you what it shows as to inventory.

A. I have a minus figure in the caption of "Inventory", $5,789.18. That requires explanation.

Mr. LeSourd: Go ahead and explain your answer.

A. (Continuing) When we work out these work sheets, we try to analyze a little bit as to the profit picture that appears. Not having a slip showing what inventory Mr. Erickson gave to me, I don't know what figure was worked on, but in using the inventory, we find that the profit has ballooned to a point that it is impossible to have made such a profit. So, in analyzing it, I take the estimate, what may have not been charged in purchases, there may be a sale that has been brought in ahead, or left

(Testimony of L. Hicks Taylor.)

out, and there can be various things that affect a work sheet of this type. So, in order to bring some kind of a viewpoint to the point of this business, I made an estimate that the inventory was overstated, that the purchases were probably overstated, and I estimated that the [4346] costs of goods sold would have to be reduced possibly $5,789.18 to display somewhere near the true profit for the period.

It is merely a calculation. A minus inventory does not exist, only on paper. It does not exist otherwise, and this being a notice to Mr. Forster that the gross profit could not range to the figure that an actual inventory would show. I use this as a flag, to let him know that I thought there was some error somewhere.

Q. (By Mr. Griffin): Where—this work sheet is one of these you have been claiming all of this time as your own, isn't it?

A. I prepared it, yes.

Q. What you delivered to Mr. Forster was one of the balance sheets on white paper?

A. Typed up, yes.

Q. Typed up; well, where was there any flag on that typed-up paper that you delivered to him?

A. I would say that Mr. Forster can read one of these statements, and when he would see the inventory marked minus on the balance sheet and saw the inventory marked minus on the profit and loss statement, that he would know that there was something that should need [4347] some action, or for correction.

(Testimony of L. Hicks Taylor.)

Q. That was your job, wasn't it?

A. Not necessarily.

Q. Did you ever carry a minus inventory into a year-end statement for tax purposes?

A. No; no, this is descriptive of operation. It is for a purpose of keeping a proprietor of a business in line, and giving him some idea what his profits are running for the period.

Q. Mr. Taylor,——

A. (Interposing) This has nothing to do with the closing of books. This is not closed into the books at all. This is a work sheet.

Q. (Continuing) Mr. Taylor, that statement, that balance statement that you delivered to Mr. Forster once each month, was not a work sheet, was it?

A. It was; it was a descriptive sheet for the period under review.

Q. And you say, Mr. Taylor, that A-51 on the white sheet that you delivered to Mr. Forster was a flag?

A. That is right, flagging that figure.

Q. Mr. Taylor, as an accountant finding a minus inventory from a bookkeeper, was it any flag to you? A. Sure. [4348]

Q. Then why didn't you investigate and correct that situation?

A. I called it to the attention of Mr. Forster and Mr. Erickson, both.

Q. How many times?

A. Is that a question? I apologize, Mr. Griffin.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: It is all right.

A. How many times did I call him on this one thing? I do not recollect that it happened very many times. I think probably two or three times in my experience out there.

Q. How could it happen more than once if you called it to Mr. Erickson's attention?

A. I might call your attention to this, Mr. Griffin. I was always thirty days behind in the month-end work. I went out usually the last Saturday of the month following. By the time I would have this completed and mailed to him another month would have closed up, and it is possible that this same situation could have carried over a two-month period.

Q. Well, Mr. Taylor, will you explain to the Jury how Mr. Erickson could obtain a minus inventory?

A. Oh, there are many ways that in calculation——

Q. (Interposing) Now, before—let me interrupt [4349] you before we do that, because, as you said, the inventory sheet supplied by Mr. Erickson is not on this? A. That is right.

Q. So that I will hand you A-52, which also shows a minus inventory, does it not, and that is for the month of April——

Mr. LeSourd: (Interposing) Just a moment. I think that should be offered before it is talked about.

The Court: Wasn't it offered?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: I don't believe so.

Mr. Griffin: I am sorry. I thought A-51 and A-52 were both in.

Q. (By Mr. Griffin continuing): April 30, 1949——

Mr. LeSourd: (Interposing) We will make the same objection, your Honor. It is also one that was excluded by your Honor when offered. It is irrelevant and immaterial, and improper cross-examination.

The Court: It is a work sheet.

Mr. Griffin: Yes, your Honor.

The Court: The objection is overruled.

(Defendants' Exhibit No. A-52 admitted in evidence.) [4350]

Q. (By Mr. Griffin continuing): A-52 shows what as to inventory, Mr. Taylor, your work sheet?

A. An inventory figure written, not in my penmanship, shows——

Q. (Interposing) I said, please, just a moment, what does your work sheet show as to inventory?

A. My work sheet shows a minus $7,618.76 on the P & L statement.

Q. That is dollars?

A. That is correct.

Q. Now, you were starting to explain how—starting to explain how Mr. Erickson could get a minus inventory. Now, the first sheet——

Mr. LeSourd: (Interposing) I will object to that. He never said Mr. Erickson said anything about a minus inventory. I will object to Mr.——

(Testimony of L. Hicks Taylor.)

Mr. Griffin: (Interposing) I think that is what we started to do when I interrupted, so that he could have this sheet.

Q. (By Mr. Griffin continuing): I interrupted you again.

This sheet attached is Mr. Erickson's handwriting, isn't it?

A. That is my belief, it is. [4351]

It looks more like it.

Q. That would be the sheet he gave you as to inventory? A. Correct.

Q. Now,——

Mr. Griffin: Does the Court want to adjourn?

The Court: We can go another five minutes or so.

Mr. Griffin: Yes.

Q. (By Mr. Griffin continuing): Now, will you explain to the Jury how Mr. Erickson could get a minus inventory when there are actually physical assets on hand?

A. Mr. Griffin, might I explain this? I think you asked me how Mr. Erickson could get a minus inventory. Mr. Erickson has not furnished me a minus inventory. He has furnished me a plus inventory. This is only my calculation to call attention to what I think could have happened. It is only a calculation. If, from this work sheet, we take the inventory that Mr. Erickson gave me of $42,-381.24, this business in four months' period, clear beyond all question of doubt, showed a profit of $129,231.99 which was a profit of about 25 percent

(Testimony of L. Hicks Taylor.)

which they never made in their lives. So, I started making my calculation to see if I could arrive [4352] at something that I thought might be in error.

(Whereupon, there was a brief pause while the air raid sirens blew.)

A. (Continuing) I started making my calculation to see if I could determine an approximate amount of difference that could exist, the theory being that many times that an inventory may be taken a week later than the close of the end of the month. It might have been taken the week before. It might have been taken on Sunday. Inventories are taken at different periods and this being one month back, as I have explained to you, I always did this work sheet one month after the journal was closed, so I made out a balance sheet here and by using the inventory of $42,381.24, by the net worth basis which has been discussed here, this sheet showed a profit of $129,231.99, or approximately $32,000 a month profit in those four months.

So, I felt, in my own mind, that there must be some difference, so in order to place it before Mr. Forster, I made a calculation of an approximation of $50,000 that was probably taken in in some indirect way, and I came out with a profit, by applying fifty thousand dollars to purchases, reducing them by the $42,000 inventory, with a profit of $79,231.99, which, in actual figures, is approximately fifty thousand dollars [4353] even difference.

This was only as a flag, or a notice, that some-

(Testimony of L. Hicks Taylor.)

where, there must have been an error of somewhere in the neighborhood of fifty thousand dollars, and should be corrected, and I am thirty days after the journal has been closed, so something has to be worked out in the following period. That is the purpose of what you might call not a nice inventory, or an addition to the cost of goods sold, and I have added $7,618.76 to the cost of goods sold to attempt to arrive at a true gross profit.

The Court: Now, Ladies and Gentlemen of the Jury:

We are going to recess a little early this noon, so at this time, we will suspend operation of the case now before five minutes after twelve. The Court calls your attention to the admonition given you on similar occasions, and asks that you heed the same admonition on this occasion.

You may now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 12:06 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:46 o'clock p.m. April 21, 1954, at which time, counsel [4354] and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

(Testimony of L. Hicks Taylor.)

It is stipulated that the Jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Taylor, proceeding with A-52, which is the sheet we were examining about prior to recess, as I understand your testimony, upon this attached slip of paper, Mr. Erickson gave you inventory, April 30, 1949, in his own handwriting, $42,381.24, is that correct?

A. Yes.

Q. Above that, you have written on this inventory slip that Mr. Erickson gave fifty thousand dollars, is that correct? A. Yes.

Q. Subtracted Mr.—the figure given you by Mr. Erickson and got a minus inventory of $7,618.76; correct? [4355]

A. I got minus cost of goods sold, or minus inventory, whichever you want to call it.

Q. And minus $7,618.76 is your figure, and not Mr. Erickson's? A. Right, sir.

Q. Then you did not accept figures from the tape for inventory and simply enter them in the books, did you? A. May I have it, please?

(Whereupon, Exhibit was handed to the witness by Mr. Griffin.)

A. (Continuing) This Exhibit A-52 is a work sheet, and none of the figures that are used in working out a work sheet, except the original trial balance, which are the figures that show on the left-

(Testimony of L. Hicks Taylor.)

hand here, are in the books. We do not enter monthly any of these figures. They are only for informative purposes, these work sheets. So, the books have not been changed in any way because of this calculation.

Q. I think you testified just before recess that in analyzing these figures, you determined that there was a fifty thousand dollar error, is that correct?

A. Not necessarily an error. I wouldn't say. I figure that there must be some discrepancy of some kind. I wouldn't know what it would be. [4356]

Q. You wouldn't know what it would be, and you proceeded to analyze the figures on Exhibit A-52?

A. Yes, I came to a conclusion of my own.

Q. And you made the changes accordingly?

A. Yes.

Q. Well, Mr. Taylor, wouldn't the place to look for a fifty thousand dollar error in the month of April be in the books of the corporation?

A. Well, you understand I was out there one day, and probably this was done in my office the next day, or a day later. I didn't have the book to make an examination.

Q. Mr. Taylor, would not the place to find a fifty thousand dollar error in the month of April, 1948, be in the books, or records, of the Issaquah Creamery Company, or Alpine—Issaquah Creamery Company?

A. You are absolutely correct. That is what that was for, to call it to the attention of whoever might check on it.

(Testimony of L. Hicks Taylor.)

Q. Why didn't you examine the necessary books of the Issaquah Creamery Company to find where a manifest error had been made in the month of July, 1948? A. I was not——

Q. (Interposing) 1949.

A. (Continuing) ——making audits of the records [4357] at that time.

Q. An analysis of a trial balance by an accountant is the highest form of professional auditing, is it not? A. No.

Q. Just a moment. Where it results in the change of income or disbursements?

A. No, it is not.

Q. Then I understand your testimony that with a fifty thousand dollar error somewhere as of April, 1949, you made a report to Mr. Forster simply based upon assumptions, is that correct?

A. That is correct, for his knowledge, yes.

Mr. Griffin: Will you mark this folder for identification, please?

The Clerk: Defendants' Exhibit No. A-121 marked for identification.

(Defendants' Exhibit No. A-121 marked for identification.)

The Court: Is that 121, Mr. Clerk?

The Clerk: Yes, your Honor.

The Court: What is 120?

The Clerk: This, which was not offered (indicating.)

Mr. Griffin: That is identified and not offered.

Q. (By Mr. Griffin): Handing you Exhibit A-

(Testimony of L. Hicks Taylor.)

121 for identification, I will ask you if this is the balance sheet, Issaquah Creamery, profit and loss statement, working papers, as you call them, to which is attached a minute signed by you, the balance sheet being as of March 31, 1950?

A. Yes, that is my work sheet.

(Whereupon, there was a brief pause.)

Mr. LeSourd: We object to it, as irrelevant and immaterial, and improper cross-examination. It is outside March, 1950.

Mr. Moriarty: We join in the objection, if your Honor please.

Mr. Griffin: May I state the purpose of the offer?

The Court: You may.

Mr. Griffin: I am concerned only in the offer with the balance sheet and profit and loss statement, Issaquah Creamery Company, to ascertain if that is the same sort of balance sheet and profit and loss statement that he submitted to Mr. Forster, which he says was a flag in 19—in the months—for the month of March 31, 1949, and April, 1949, of which we cannot find the white sheets themselves. I am dealing with this matter of inventory, only.

The Court: It is in 1950?

Mr. Griffin: Yes, March, 1950. I simply want to use the first two sheets as an example, is all.

The Court: It is difficult for me to see how anything in 1950, regardless of what the purpose might be, Mr. Griffin, would be admissible. It is beyond——

(Testimony of L. Hicks Taylor.)

Mr. Griffin: (Interposing) There is no question about that.

The Court: That is, over objection.

Mr. Griffin: I understand.

The Court: Objection will be sustained at this time unless there is a further showing.

Mr. Griffin: All right.

Q. (By Mr. Griffin): Did you submit a balance sheet and profit and loss statement to Mr. Forster in typewriting for the month of April, 1949, and the month of March, 1949?

A. It is my recollection that I did, yes.

Q. How would you show a minus inventory upon those printed statements, typewritten statements, Mr. Taylor?

A. If I remember correctly, without having the typed copies, I believe that I wrote an explanation on the bottom of each one to explain my contention, to call it to Mr. Forster's attention.

Q. You always did that with a minus inventory, did [4360] you, Mr. Taylor?

A. Usually, when very unusual things happened, I dropped Mr. Forster a line as to what I thought would be the corrective motive to take care of it.

Mr. Griffin: Now, I again offer, if the Court please, the first two sheets of the Exhibit, A-121.

Mr. LeSourd: Same objection, your Honor. I don't see where it has any relevancy at all.

The Court: Well, possibly it has a little different

(Testimony of L. Hicks Taylor.)

application at this time, but I still feel the objection should be sustained.

Q. (By Mr. Griffin): Referring to Exhibit A-31, Mr. Taylor, which is a balance sheet and profit and loss statement for December 31, 1948, inventory slip attached, what inventory did Mr. Erickson give you for the month of December, 1948?

Mr. LeSourd: Objected to, your Honor, as improper cross-examination and irrelevent and immaterial.

The Court: What exhibit is that, again?

Mr. Griffin: A-31, I believe, in evidence.

The Court: And the question, Mr. Reporter?

(Whereupon, preceding question was read by the reporter.)

The Court: Objection overruled.

A. Might I ask, Mr. Griffin, if you could find the [4361] work sheet that matches this, or do you have it?

Q. (By Mr. Griffin): Mr. Taylor, my first question is: What inventory figure did Mr. Erickson give you for the month of December, 1948?

A. The slip upon here shows an inventory of $83,319.62, and in examining this balance sheet and quoting strictly from memory, I will say, and I believe, that my work sheets will uphold me, that a transfer from this inventory figure was made into an account called "Improvements." As I remember the transaction, there was $10,000 of building material in this inventory, and that that was transferred into the improvement account, and the

(Testimony of L. Hicks Taylor.)

saleable products inventory reduced ten thousand dollars.

Q. In other words, you changed inventory, actual inventory figures given you by Mr. Erickson at will, didn't you?

A. No, that change was made at the instigation of Mr. Forster.

Q. Oh, you discussed—you recall, don't you, that you discussed this particular item with Mr. Forster?

A. I say, I am quoting what I remember, and I personally would not know what the inventory was composed of without the help of those who took it.

Q. My question is: You recall specifically discussing this charge of ten thousand dollars to improvements with Mr. Forster, don't you?

A. I am quite sure that I do, yes.

Q. Now——

A. And it was at Mr. Forster's suggestion, wasn't it, that you changed your—that you changed the inventory figures?

A. That is my opinion, yes.

Q. And it was at Mr. Forster's suggestion, wasn't it, that you put that in improvements?

A. Yes, sir.

Q. And when did you do that?

A. In all probability about the end of January of 1949.

Q. You have a distinct recollection about that conversation, and Mr. Forster's instructions, don't you?

(Testimony of L. Hicks Taylor.)

A. I said I have a recollection, yes.

Q. And you had your forms made out for what you call your working papers, items made out to be filled in, each time you went out to Issaquah, didn't you?

A. No, I prepared them while I was there, or when I came back to my office.

Q. You prepared the whole thing there?

A. Sometimes; sometimes I didn't have a [4363] chance to finish them.

Q. Now, I hand you your working sheet, Mr. Taylor, A-28. You changed the figures on that working sheet, yourself, didn't you?

A. Well, who else would? I am the one that does the writing on these sheets.

Q. Mr. Forster doesn't do any writing on there?

A. Mr. Forster did an awful lot of thinking on them.

Q. What was the purpose of that thinking, to beat income taxes?

A. I would not say that. If you will look at this report here, you will see that the net profit has not been changed in any way.

Q. No; but you did change the inventory figure given by Mr. Erickson, didn't you?

A. We did change the purchases by ten thousand dollars, and changed the inventory by ten thousand dollars, and did not in any way change the net profit for the year.

Q. And you changed the work sheet, A-28, on inventory from the original figure you had on there

(Testimony of L. Hicks Taylor.)

by reducing it ten thousand dollars as shown in your own writing, didn't you?

A. Nobody has denied that. [4364]

Q. I am just asking you if you did.

A. I say, "Yes."

Q. What was the purpose of the change, Mr. Taylor?

A. I believe I testified what it was.

Q. And that was what?

A. Materials for construction.

Q. Yes, but what was the purpose of making the change?

A. What was the purpose? I apologize. Pardon me. Charges are generally made for the purpose in which they are purchased for, to fit the situation.

Q. As I understand your situation to be, it is that the change to be made in your analysis is as you saw fit, to meet any situation?

A. Are you through with the question?

Q. Yes, sir. A. That is not so.

Q. Well, what was the situation you wanted to meet when you reduced Mr. Erickson's inventory by ten thousand dollars?

Mr. LeSourd: Objected to as repetition. The question was answered once or twice.

The Court: I believe the answer isn't clear. The Court will overrule objection. [4365]

A. Materials purchased for improvement that were inventoried were transferred from an inventory to an improvement account.

Q. (By Mr. Griffin): Is this a new account?

(Testimony of L. Hicks Taylor.)

A. Yes, it shows on the balance sheet.

Q. And you haven't had such an account before?

A. Oh, many times.

Mr. Griffin: May I see 212, please?

(Whereupon, Exhibit was handed to Mr. Griffin by the Clerk.)

Q. (By Mr. Griffin): Now, you have—you analyzed, did you then, at the end of each month, these statements that you were making?

A. No, not necessarily.

Q. If you thought the profit was too much, you analyzed it, did you? A. Not always.

Q. With reference to Exhibit 212, which is the accounts payable journal of Renton Ice and Ice Cream Company, Mr. Taylor, I think you have testified these figure "1's" were not written by you?

A. That is right.

Q. The result of those figures showed [4366] accounts payable for the month of August, 1947, of $18,277.36, did it not?

Mr. LeSourd: Objected to, your Honor, as not August. It is July. And, furthermore——

Mr. Griffin: (Interposing) Correct.

Mr. LeSourd: (Continuing) ——that is not a total of the actual results of the "1's."

Mr. Griffin: July is correct.

Q. (By Mr. Griffin continuing): Is that correct?

The Court: The amount, I don't know.

Mr. LeSourd: It is not a correct total of the "1's" as phrased in this question.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Griffin continuing): My question was: the result of adding those "1's" gave accounts payable for the month of July, $18,277.36, didn't it? A. No.

Q. What did it give?

A. It had nothing to do with it.

Q. What is the total, $18,277.36, Mr. Taylor?

A. That is the total of accounts payable for that period.

Q. For the month of July?

A. No, it is for the end of the year.

Q. It is? [4367]

A. That is the total for the end of the fiscal year.

Q. All right; the total for the end of the fiscal year, then, what were the accounts payable, Mr. Taylor, for the month of June?

A. I don't know.

Q. Will you look?

A. There is a figure here of $9100 but I don't know anything about it.

Q. Mr. Taylor, Exhibit 212 is the accounts payable journal of the Renton Ice and Ice Cream Company, is it not?

A. No, that is the accounts payable journal of Mr. Ray Schneider. It had nothing to do with the books I worked on. They were not part of the books.

Q. You never saw them before, did you, Mr. Taylor? A. Is my writing on there?

Q. Just a moment, Mr. Taylor. I will ask the questions. A. Sorry.

Q. You never saw Exhibit 212 before, did you?

(Testimony of L. Hicks Taylor.)

A. I may have seen that book, yes. I say that, but that wasn't part of the complete set of books.

Q. You were still at this time the Secretary-Treasurer [4368] of the Renton Ice and Ice Cream Company, is that correct? A. Yes.

Q. Aside from Exhibit 212-A and the Exhibit 212, did the Renton Ice and Ice Cream Company have any other accounts payable journals from the time of its incorporation up to and through the year 1949 other than these two?

A. As far as I know, Mr. Schneider had those books.

Q. Did you ever examine them?

A. I probably did.

Q. All right; now, then, what does Exhibit 212 show was the accounts payable for the month of June, 1947?

A. I will read you the amount that it shows in the book.

Q. All right. A. $9,115.53.

Q. And, for the month of May?

A. $7,337.73.

Q. And for the month of April?

A. $7,920.30.

Q. And for the month of March?

A. $7,340.52.

Q. Then, Mr. Taylor, those amounts that [4369] you have just read are around $30,000.00 at least in the accounts payable, aren't they?—month by month? A. I don't know.

Q. Do you still want to say that this item of

(Testimony of L. Hicks Taylor.)

$18,277.36 is the—represents the accounts payable for the fiscal year of 12 months preceding?

A. That is the closing accounts payable for the fiscal year.

Q. But representing in that item alone the accounts payable for the last month only of that fiscal year, isn't that correct?

A. It is nearly correct. It could possibly have accounts payable two or three months old. It doesn't necessarily have to be the current month.

Q. Mr. Taylor, what were the accounts payable approximately of the Renton Ice and Ice Cream Company for the twelve months' period ending with the fiscal year-end month of July, 1947?

A. I don't know as I understand your question.

Q. Well, the accounts payable of Renton Ice and Ice Cream Company ran around eight to nine thousand dollars a month, didn't they, as you made the returns?

Mr. LeSourd: I will object to that, your Honor. The return is made only at the end of the fiscal year. He made no returns for each month. [4370]

The Court: Well, the witness can answer the question. The question was put. Do you understand the question?

The Witness: I don't know if I get what he is driving at, at all.

Q. (By Mr. Griffin continuing): Mr. Taylor——

The Witness: (Interposing) I get the principle of it.

Q. (By Mr. Griffin continuing): Mr. Taylor,

(Testimony of L. Hicks Taylor.)

you prepared the income tax return for the Renton Ice and Ice Cream Company during the time of its existence down to and including the year 1949, didn't you? A. Yes, I did.

Q. What were the average—was not the average of accounts payable each month, at least during 1947, 1946 and 1948 and 1949, approximately eight to nine thousand dollars a month?

A. I do not know.

Q. Is it your testimony that for the fiscal year ending July, 1946, the accounts payable for that year were $18,277.36?

A. That is the figure that was used for the income tax return in closing the books for the close of the year. [4371]

Mr. LeSourd: 1947, I believe it is.

A. (Continuing) 1947.

Q. (By Mr. Griffin): 1947; my question is: is the total that you used of Accounts Payable for the Renton Ice and Ice Cream Company for the fiscal year ending July, 1947, total accounts payable for that year, $18,277.36?

A. No; this is the balance owing at the end of that period.

Q. Balance of accounts payable?

A. Correct.

Q. Now, will you look at Exhibit 212? That fiscal year would begin in what month?

A. In August 1st.

Q. August 1st of 1946? A. Yes.

Q. All right; beginning August 1, 1946, Mr. Tay-

(Testimony of L. Hicks Taylor.)

lor, referring to Exhibit 212, what was the total of accounts payable for that month?

A. $14,338.05.

Q. The following month?

A. That is the end of the fiscal year.

Q. All right. A. $7,534.87.

Q. That is $7500? Correct? [4372]

A. Right.

Q. The next month? A. $5,368.27.

Q. The next month? A. $5,285.58.

Q. And the next month? A. $3,561.15.

Q. And the next month? A. $3,977.95.

Q. And the next month? A. $5,600.73.

Q. And the next month? A. $4,661.18.

Q. And the next month? A. $3,977.95.

Q. And the next month? A. $5,600.73.

Q. And the next month? A. $4,661.18.

Q. And the next month? A. $7,346.54.

Q. And the next month? A. $7,920.30.

Q. And the next month? A. $7,337.73.

Q. And the next month? A. $9,144.26.

Q. All right.

A. Final accounts payable, $18,277.36.

Q. Now, having read the amount of accounts payable for the 11 preceding months, were you not attracted to the amount of accounts payable of $18,000 in the month of July?

A. It looked satisfactory to me.

Q. Notwithstanding it was over 100 per cent over any other accounts payable month, is that right? A. That has no bearing on it.

(Testimony of L. Hicks Taylor.)

Q. You knew——

A. (Interposing) This book was not being used as a regular book in our business.

Q. It wasn't? A. No.

Q. Nor Exhibit 212, is that correct, and Exhibit 212-A?

A. Mr. Griffin, I can show you where Mr. Schneider abandoned this book and would not keep it going. It was abandoned completely by the business practically on his own motion.

Q. Will you just show me where Mr. Schneider abandoned 212-A? [4374]

A. Right in here. See, this book was quite complete back in here.

Q. Just show me, Mr. Taylor, where Mr. Schneider abandoned 212-A? A. Right here.

Q. By "right here," you are referring to the page preceding April, 1943, is that right?

A. That is correct.

Q. The total of the preceding page of the accounts payable, unpaid bills, is $3,701.93, is that correct? A. Yes.

Q. And who wrote that in?

A. That is my writing. I am the one that did that. That is when Mr. Schneider abandoned the book.

Q. So that you did have the book back in there?

A. This was originally an installation but Mr. Schneider abandoned it.

Q. Whose figure is that above yours for the accounts payable for $9,110.60?

(Testimony of L. Hicks Taylor.)

A. That was probably Mr. Schneider's figure at some time.

Q. But you wrote below it, $3,701.93, didn't you?

A. Sure, because I worked it out. [4375]

Q. The last entry where you say the book was abandoned is March 29, 1943, sheet 1, 2, 3, 4, 5, 6 entries under that; isn't that right?

A. That is right.

Q. The next sheet begins April 1, 1943—excuse me just a second, sir,—and carries every month, month by month, and year by year, through the rest of 212-A and through 212, doesn't it?

A. Yes, but the system was changed by Mr. Schneider, as I am trying to tell you.

Q. You knew that neither Mr. Schneider nor Mrs. Baskett was receiving their full salary, didn't you? A. They were receiving it, yes.

Q. And under the arrangement made paying a portion of it to Mr. Forster?

A. They received their full salary.

Q. And paying a portion to Mr. Forster?

A. That was their agreement.

Q. But you prepared both Mr. Schneider's and Mrs. Baskett's income tax returns for them charging them with the full salary, and no deduction out, didn't you? A. Correct.

Q. With regard to Finstad and Utgard in the year 1946, you changed their inventory figures by around ten [4376] thousand dollars, round figures, and in 1948 by a round figure, $4,000, didn't you?

A. I did not.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Just a moment, Mr. Taylor. Objected to as incompetent, irrelevant and immaterial, and improper cross-examination, and I move that the answer be stricken and that the question be stricken.

The Court: On what grounds, Mr. LeSourd? On the ground it is an item not covered in direct?

Mr. LeSourd: Not covered in direct examination, your Honor, and irrelevant to any of the Government's charges in this case.

The Court: That is the same objection you made to other items?

Mr. LeSourd: It certainly is, your Honor.

The Court: Objection overruled.

Q. (By Mr. Griffin): Mr. Taylor, did you change the inventory figures of Finstad and Utgard by ten thousand dollars in the year 1946?

A. No, I did not.

Q. Were they changed? A. I do not know.

Mr. LeSourd: May the Court please, may we have a continuing objection to this line of questioning, [4377] this Finstad and Utgard matter?

The Court: On inventory, you may.

Mr. LeSourd: On the same grounds just stated.

Q. (By Mr. Griffin): Did you change the Finstad and Utgard figures by $4,000 in 1948?

A. I did not.

Q. Did you change Finstad and Utgard's accounts payable at December 31, 1947?

A. I did not.

Mr. LeSourd: Just a moment. May we have the

(Testimony of L. Hicks Taylor.)

same objection, your Honor, to the examination on this subject? This is Accounts Payable.

The Court: This is Accounts Payable?

Mr. LeSourd: Yes.

The Court: Of Finstad and Utgard?

Mr. LeSourd: Yes; on the same grounds previously stated?

The Court: Yes.

Mr. LeSourd: Your Honor, that is understood to be a continuing objection on all this same line?

The Court: On this same line.

Mr. LeSourd: Yes; to avoid objecting.

The Court: That is quite agreeable, Mr.——

Mr. Griffin: (Interposing) Yes, your Honor.

The Court: If there is any objection on form, or otherwise, you will make it?

Mr. LeSourd: I would on form, yes, sir.

Q. (By Mr. Griffin): Now, I hand you A-44, which is in evidence, and ask you if that exhibit refreshes your recollection as to the changes in inventory and accounts payable that I just referred to? A. Is that December, 1947?

Q. Accounts payable, yes.

A. December, 1947, there appears to have been an added ten thousand dollars to the accounts payable, December, 1947.

Q. And that ten thousand dollars, added to the accounts payable was taken off of inventory, wasn't it? A. It was not.

Q. Who added the ten thousand dollars to accounts payable?

(Testimony of L. Hicks Taylor.)

A. I would say Mr. Egeness.

Q. You carried it into your ledger?

A. I did.

Q. Did you make any inquiry about it?

A. I did.

Q. What was it?

A. It was the bonus due on the milk. [4379]

Q. Due whom? A. The farmers.

Q. What do you find as to inventory, 1946-1947 in that Exhibit, Mr. Taylor?

A. The inventory appears to be in Mr. Egeness's writing, $7,760.96.

Q. Any change in it?

A. I can't see it.

Q. Do you know what you carried into your ledger? A. No, I do not remember.

Q. (Continuing) At the year-end?

And, at the end of 1947, what is the inventory?

A. $7,760.96.

Q. It wasn't necessary for you to look at any page except the first page, Mr. Taylor, on this item of inventory? A. For what reason?

Q. I say, it wasn't necessary upon my question?

A. Here is the information, right there.

Q. Thank you, sir. The inventory figure manifestly has been changed, hasn't it, Mr. Taylor?

A. It is whatever Mr. Egeness set it up at. It may have been changed. If it was typed, it has been changed in pencil.

Q. The sheet itself is typed, isn't it? [4380]

A. Yes.

(Testimony of L. Hicks Taylor.)

Q. The sheet itself manifestly shows an erasure, doesn't it? A. It is possible.

Q. And a pencil figure written in?

A. Yes.

Q. That is the figure you used, isn't it, Mr. Taylor? A. Yes.

Q. The same is true of accounts receivable, the original figure erased, and a new figure written in, in pencil, is that correct? A. Yes.

Q. You were the accountant, secretary-treasurer, of Finstad and Utgard, weren't you?

A. In name, yes.

Mr. Griffin: Will you mark this?

The Clerk: Defendants' Exhibit A-122 marked for identification.

(Defendants' Exhibit No. A-122 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-122, Mr. Taylor, for identification, I will ask you if this is not a record of the 1947 bonuses that you have just testified to, [4381] wherein you made a change of ten thousand dollars, Finstad and Utgard?

A. I wouldn't know. I don't know anything about the bonuses.

Q. You made a change of ten thousand dollars?

A. No, I didn't make the change.

Q. You just explained to the Jury, did you not, there was a change of ten thousand dollars due to bonus by Mr. Egeness? A. Yes.

(Testimony of L. Hicks Taylor.)

Q. All right; did you make any inquiry as to the bonus?

A. Mr. Egeness was general manager. I took his figures.

Q. Did you make any inquiry as to bonuses?

A. I didn't have to. He was manager. It wasn't necessary for me to question his figures.

Q. Did you make any inquiry as to the bonus?

A. No, I did not.

Q. Did you have supplied you, on the matter of bonus, Exhibit A-122, or a copy of it?

A. No, I did not.

Q. The bonuses, Mr. Taylor, were around five hundred dollars, weren't they?

A. That, I do not know. [4382]

Q. Was Exhibit 252—is that one of your work sheets, Mr. Taylor?

A. Well, it looks as though it might be one of this group of papers that I left with Mr. Forster in his office; it is my writing, if that is what you want to bring out?

Q. It is in your writing?

A. Yes, you bet it is.

Q. Headed Hans Forster, financial statement, February 28, 1948?

A. That is what it reads, yes.

Q. What was the purpose in preparing it, Mr. Taylor?

A. May I ask: is there a typed schedule of this kind?

(Testimony of L. Hicks Taylor.)

Q. My recollection is there was one in evidence, Mr. Taylor? I don't recall the number.

A. You don't recall the number of it. What is the nearest one? May I have the nearest one to this date? That might refresh my memory as to some of this. Could I have it, please?

Q. Certainly, if I can get it for you.

Mr. Patten: 123.

Mr. Griffin: 123?

Mr. Patten: Yes. [4383]

Q. (By Mr. Griffin continuing): The nearest one I find in evidence is dated February 29, 1948, and the one I just handed you, Exhibit 252, is February 28, 1948, one day difference.

The Court: Is there a question pending?

Mr. Griffin: The question was:

Q. (By Mr. Griffin continuing): What was the purpose in preparing this statement for Mr. Forster? What I am trying to clear is, I would like the one that joins nearest this date that was actually given to the bank. Have you another one that was actually given to the bank?

Mr. Maxwell: 123 was.

Q. (By Mr. Griffin): Well, Plaintiff's Exhibit 124 is Financial Statement, March 31, 1947, and Exhibit 122 is December 31, 1948.

A. That is—that will be helpful in a slight explanation of why this statement was prepared.

From the best of my recollection, at that time, Mr. Forster wanted to borrow two hundred thousand dollars to build an ice cream plant. Mr. Strack

(Testimony of L. Hicks Taylor.)

and Mr. Donaldson, who both testified here, did not come out clearly to Mr. Forster that they didn't want any more of his loans at that time, because he had loaned past their [4384] loan limit, so I was called secretly to be talked to about this situation, how Mr. Forster could possibly liquidate all the loans that he had, of his various companies.

Q. Called secretly by whom?

A. By one of their credit men.

Q. Do you remember his name?

A. No, I cannot remember.

Q. By that, you mean credit men at the bank?

A. Yes.

Q. Not by Mr. Forster secretly? A. No.

Q. All right.

A. So, I had a tentative financial statement made up as of this date, showing a net worth of Hans Forster of seven hundred fifty-five thousand dollars.

If you folks have seen this—we have, this is Hans Forster, Alpine Dairy Assets, with various associate companies, showing their net worth each, in this case, Issaquah Creamery, $342,000, Apex Farms, $69,000, Finstad and Utgard, $74,000, Puyallup Creamery, one-half interest, $14,000, Renton Ice, $19,000. In other words, this statement was made up to show Mr. Forster's net worth, of his Alpine Dairy, plus his other holdings. [4385]

The banker wanted to know what the cash position, what a quick turnover—what a quick payment would do. So, with a little effort, I took the various

(Testimony of L. Hicks Taylor.)

statements to see. One change was made. We estimated what could be liquidated from accounts receivable, in a hurry, in case of a close-down. We assumed within fifteen days we could collect approximately one hundred thousand dollars, so we analyzed from a standpoint of moving one hundred thousand dollars out of accounts receivable, and moving it up into the cash to make the cash position better.

Then we took the added—now, this was Alpine Dairy accounts receivable we were talking about, so we reduced Alpine Dairy one hundred thousand dollars, accounts receivable, and increased the cash to show the application. Then we took all the statements to see what we could accomplish with the various statements in bringing into a cash position in a quick liquidation.

We estimated we could accumulate one hundred thousand dollars there. So, we moved two hundred thousand dollars ahead of the ninety-three thousand dollar balance on the Alpine books, increased the accounts payable, because Mr. Forster's position would be different. If he took money from one of those corporations to liquidate his loans, he would owe the [4386] corporation.

So, in order to get the application of the possible quick cash position, we increased the accounts payable one hundred thousand dollars and remained with the same net worth figure of $755,512.

That was the purpose of this particular paper. I am sorry I don't have all the work sheets that

(Testimony of L. Hicks Taylor.)

have been spread around to actually show you in detail on that work sheet.

Q. The purpose then, Mr. Taylor, of making up Exhibit 252, was to make out a financial statement of Mr. Forster's net worth, wasn't it?

A. Of his enterprises, yes, to show a quick liquidation position.

Q. And with reference to—you will notice that Exhibit 123 bears the signature of Mr. Forster, doesn't it? A. That is right.

Q. You made up the document, didn't you, Mr. Taylor?

A. Oh, yes; I prepared the document.

Q. You showed cash on hand and in banks, $293,848.11, didn't you, Mr. Taylor?

A. That was shown for that purpose, yes.

Q. This was a statement delivered to the Peoples [4387] Bank for the purpose of credit, wasn't it? A. At their request, yes.

Q. You knew at the time when you made up that statement showing cash on hand, $293,848.11 that it was utterly untrue, didn't you? A. I——

Q. (Interposing) You can answer that "yes" or "no," Mr. Taylor. A. No.

Q. Oh, he did have it on hand?

A. I believe I testified that the principle and the purpose and the method of preparation and the purpose of it.

Q. Mr. Taylor, cash on hand and in banks in accounting practice means precisely what it says, does it not—cash in my pocket or in the bank?

(Testimony of L. Hicks Taylor.)

A. I would say that when I prepared that, that could have been possible.

Q. Was the bank—this gentleman whose name you do not remember at the Peoples Bank, requesting you to make an untruthful financial statement to the bank on behalf of Hans Forster?

A. No, he was not.

Q. Why did you do it?

Mr. LeSourd: I object to the form of that [4388] question, your Honor.

The Court: Objection sustained. Should we take the recess, Mr. Griffin?

Mr. Griffin: All right. Excuse me.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court advises you you are to heed the admonition given you on similar occasions.

You may now be excused.

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 2:48 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:01 o'clock p.m. April 21, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: Mr. Griffin?

Mr. Griffin: If the Court please, with reference to Exhibit A-121, which is this folder dealing with March 31, 1950, and which I want to primarily use the first two sheets to show how he handled minus

(Testimony of L. Hicks Taylor.)

inventory in reports to Mr. Forster, I think your ruling was you couldn't see how anything in 1950 could be admissible.

The Court: That is on figures not related [4389] to 1949.

Mr. Griffin: Yes, sir.

The Court: The second offer, I take it, was on impeachment.

Mr. Griffin: That is true, but I wanted to use the sheets to show how Mr. Taylor made his reports on minus inventory, which he said were a flag to Mr. Forster. The Indictment period runs at least to March 15, 1950. Under the "Indictment," it is "Failed to file the filing, March 15, 1950, false and fraudulent returns for 1949." I would take it——

The Court: (Interposing) Aren't those figures, Mr. Griffin, relating solely to the 1950 income?

Mr. Griffin: That is true, sir. No question about that.

The Court: That was the basis of my ruling. If it had relation, of course, to 1949, it would be another matter.

Mr. Griffin: May I say to you, we have a whole folder for the year 1940—whatever the year was—'7 or '8, 1949, a whole folder of every month except the two months in question, where we had the work sheets only, and no reports. That is why I was trying to use the only example I could find of how Mr. Taylor reported [4390] it, and upon reconsideration, it occurred to us that inasmuch as the Indictment—the charge goes to at least March 15, 1950—

(Testimony of L. Hicks Taylor.)

that it would be material and should not be excluded simply because it is 1950.

The Court: I just don't see how over objection I could——

Mr. Griffin: (Interposing) I just want to make the statement to your Honor.

The Court: Yes. You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Taylor, was it Mr. Quentin Ellis of the Peoples Bank and Trust Company, the credit manager, that called you into this secret conference?

A. That, I do not recollect.

Q. You do not recollect who you talked to?

A. No, I am not sure.

Q. You spent two or three hours, you say, in that [4391] conference?

A. No, I brought it back to my office and completed it, and then returned it to him.

Q. How did he happen to call you?

A. That I couldn't tell you.

Q. You have been doing business with the Peoples Bank and Trust Company for a great number of years, have you not, Mr. Taylor?

(Testimony of L. Hicks Taylor.)

A. Since I was ten years old, yes, Mr. Taylor.

Q. And with the credit department?

A. No, not hardly at ten.

Q. I didn't ask you anything about ten, Mr. Taylor. You have been doing business in the past fifteen years? A. Oh, say, 30 years.

Q. Yes; and in a matter where you were making this sort of a financial statement that you have testified that you did, you have no recollection who the officer of the Peoples Trust and Savings Bank was with whom you conferred and who called you for a conference; is that right?

A. No, I just don't seem clear in my mind who it was.

Q. Mr. Taylor, in the financial statement of December 31, 1948, Exhibit 122, you state: "Issaquah Creamery [4392] Company, Sole Owner," do you not? A. Yes.

Q. Apex Farms, 67 per cent? A. Correct.

Q. Finstad and Utgard, sole owner?

A. Yes.

Q. Why "sole owner," Mr. Taylor, if Mr. Forster was not the sole owner of all the capital stock of Finstad and Utgard?

A. He was sole owner of a contract subject to a contingent liability to Mr. Egeness.

Q. Did you show any contingent liability to Mr. Egeness in Exhibit 122 where you refer to Finstad and Utgard, sole owner? A. No, I do not.

Q. In Exhibit 123, Financial Statement, February 29, 1948, Finstad and Utgard, Net Worth,

(Testimony of L. Hicks Taylor.)

Sole Owner, you show no contingent liability, do you? A. I believe not, but on the——

Q. (Interposing) I will get you the other one.

A. (Continuing) ——the other exhibit shows it.

Q. You realize the two I showed you were February 29, 1948, and December 31, 1948?

A. That is correct.

Q. In Exhibit 124, which is March 31, 1947, you do [4393] not show Mr. Forster as sole owner in Finstad and Utgard, do you?

A. I show the net worth, which is equivalent.

Q. Now, let's spell this out, Mr. Taylor.

The Court: Excuse me. Is that 124?

Mr. Griffin: 124.

The Witness: Yes, 124.

Q. (By Mr. Griffin continuing): In 123, February 29, 1948, you spell out Finstad and Utgard net worth, sole owner, don't you? A. Yes.

Q. The identical language you use: "Issaquah Creamery, Net Worth, Sole Owner"?

A. Yes.

Q. In Exhibit 122, you spell out Issaquah Creamery Company, Sole Owner; Finstad and Utgard, Sole Owner"; don't you?

A. Correct. I might add to that that the reason that was changed to sole owner was at the request of the bank because I had been using Issaquah Creamery Company net worth. They requested that I put "sole owner."

Q. In Exhibit—and in neither 122 nor 123 do you show any contingent liabilities, do you?

(Testimony of L. Hicks Taylor.)

A. That was correct. [4394]

Q. Was that also at the request of the bank?

A. That I would not say definitely. I may have left it off, myself.

Q. The bank——

A. (Interposing) They had—they knew what the contingent liability was.

Q. The bank in obtaining a financial statement for the purpose of credit, is definitely interested in liabilities, isn't it?

A. That is the usual contention, yes.

Q. Well, liabilities, actual and contingent, isn't it?

A. In most cases, where the bank itself does not hold all the contingent liabilities.

Q. In Exhibit 124, you simply say "Finstad and Utgard, Incorporated, Net Worth," and then at the bottom, contingent liabilities, $281,280.25; is that correct? A. That is correct.

Q. Do you know what items made up the contingent liabilities?

A. Well, I had a work sheet that showed it.

Q. Do you know now?

A. My recollection is I do not know. As I remember it, there were a number of items that made it up. [4395]

Q. Excuse me. Would your work sheet show Finstad and Utgard in those contingent liabilities, Mr. Taylor?

A. To the best of my recollection, I think it did.

(Testimony of L. Hicks Taylor.)

Q. I hand you—I will ask you if Exhibit 252 is your work sheet for February 28, 1948?

A. This is my pencil handwriting, yes.

Q. And that shows—excuse me—Finstad and Utgard, net worth, sole owner, doesn't it?

A. Yes.

Q. And shows contingent liabilities, $190,000, doesn't it? A. Yes.

Q. It doesn't show Finstad and Utgard in contingent liabilities, at all, does it?

A. As I tell you, in my work sheets, I must have the distribution. I am not going to say positively it is there, because I cannot remember exactly what made up the contingent liabilities.

Q. Mr. Taylor, your work sheet is—your work sheet, Exhibit 252, is dated February 28, 1948, isn't it? A. Yes.

Q. And that is the one that shows contingent liabilities, $190,000? [4396] A. That is correct.

Q. You made the printed copy, and dated it the following day, February 29, 1948, didn't you, Exhibit 122—123? A. Yes.

Q. You did not include contingent liabilities upon the typewritten sheet, did you?

A. No; it is my recollection that there was some comment about it.

Q. By whom?

A. At the bank; not to put it on, that it was not necessary for that particular statement.

Q. I thought the purpose of the statement, Mr. Taylor, in your long explanation before the recess,

(Testimony of L. Hicks Taylor.)

was that the bank called you secretly and wanted you to help them so that they would not have to make a loan to Mr. Forster; isn't that right?

A. No; that wasn't what I intended to say. I intended that they did not want to make an additional loan to Mr. Forster.

Q. So, at the bank's request, they requested you to leave off $190,000 of contingent liabilities because they didn't want to make an additional loan, is that right? A. Well, no, I don't believe that that is so.

Q. The $190,000 in contingent liabilities, Mr. [4397] Taylor, would detract from the value of the financial statement, wouldn't it?

A. Not necessarily, Mr. Griffin. If all the contingent liability belonged to the bank, it wouldn't detract or help. If it contained many others, it might have its effect with the loan committee at the bank.

Q. Do you know Mr. D. O. Beck of the Credit Department of the Peoples Bank and Trust Company? A. D. O. Beck?

Q. Yes.

A. I am not sure that I do. That name doesn't register.

(Whereupon, there was a brief pause.)

Mr. Griffin: Sorry; my finger slipped, and I lost my place.

(Whereupon, there was a brief pause.)

Mr. Griffin: I am sorry; my finger slipped while I was looking for the number of the exhibit.

A-2 is not in?

The Clerk: No.

(Testimony of L. Hicks Taylor.)

(Whereupon, there was a brief pause.)

Q. (By Mr. Griffin): Do you recall any of the officers at the Peoples Trust and Savings Bank with whom you conferred [4398] relative to Mr. Forster's financial situation other than the two gentlemen who testified in this case?

A. I believe that Mr. Strack and Mr. Donaldson were practically the only ones except this one time, as I remember it.

Q. Do you recall that at this one time, that you were called over, as you referred to, secretly, that that gentleman took notes?

A. I do not remember anything about that. He may have.

Q. And it would be only with that one man in the bank, whose name you don't remember, that you were called over secretly and with whom you conferred, is that correct; just the one?

A. As I remember it.

Q. Aside from Strack and Donaldson?

A. I had some 35, or 30, accounts that went through that bank, so that it is pretty hard for me to single out who I might have talked to.

Q. You knew that the bank depended upon you in any information they wanted in regard to Mr. Forster's financial affairs, didn't you?

A. I wouldn't say, altogether.

Q. By the way, you—Mr. Taylor, you were the trustee under the Hans Forster trust, weren't you?

Mr. LeSourd: Objected to, your Honor, as im-

(Testimony of L. Hicks Taylor.)

proper cross-examination, and irrelevant and immaterial.

The Court: Objection overruled. I don't know how extensive it may be. I think it was covered by reference in direct, was it not?

Mr. LeSourd: No, it wasn't your Honor. Not involved in the case, and not covered.

The Court: What would be the purpose of this, Mr. Griffin?

Mr. Griffin: I would propose to show his familiarity, which is part of his familiarity with the Hans Forster family, his relationship which he says was in nowise social, and what he did in connection with acting in the matter of the trust, inasmuch as he handled that entire matter, and handled the books of the trust.

The Court: In a limited fashion, I think the Court would overrule the objection. I think any extensive examination, unless something further is shown, would not be proper.

Mr. Griffin: I will try and make it brief, and go to the point that I want.

Q. (By Mr. Griffin continuing): You were the designated co-trustee in the Hans Forster trust established for his children, weren't you?

Mr. LeSourd: We object, your Honor. [4400]

Mr. Moriarty: We join in the objection, your Honor.

The Court: Objection overruled, in lieu of the Court's comment if examination is extended.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: May we have a continuing objection to this, if the Court please?

The Court: Yes, you may. If you will not object any further, the Court will undertake its own guidance of the examination.

Q. (By Mr. Griffin continuing): You kept the books of the trust and made the income tax for the trust, didn't you? A. Yes.

Q. All income for the trust came in a lease of the trust property to the Alpine Dairy of which you kept the books, didn't it, of which you made the tax returns?

A. The rent was paid by the Alpine Dairy to the trust.

Q. Yes; and you had charge, as trustee, of the trust bank account, didn't you?

A. That is so, yes.

Q. So that you knew then the amount of rent being paid by Alpine Dairy to the trust, didn't you?

A. Yes.

Q. The amount paid by Alpine Dairy to the trust [4401] was chargeable on the books of the Alpine Dairy as rent, wasn't it? A. Yes.

Q. On the books of the trust as income?

A. Yes.

Q. Mr. Taylor, in the year 1947, did you show on the books of the Alpine Dairy rent expense of $6,500? A. Yes.

Q. But in the trust account, only income of five thousand five hundred?

A. That is correct.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: Will you mark this check for identification?

The Clerk: Defendants' Exhibit 123 marked for identification.

(Defendants' Exhibit 123 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit 123 for identification, I will ask you what that is, Mr. Taylor?

A. That is a check made out to L. Hicks Taylor, Trustee, by the Alpine Dairy for $500.

Q. And the date of it? A. 3-10-50.

Q. And that is one of the income checks to the [4402] trust? A. That is correct.

Q. Deposited by you, Mr. Taylor, to your personal bank account, is that right?

A. That is endorsed, L. Hicks Taylor, Trustee.

Q. And deposited by you, Mr. Taylor, to your personal bank account, wasn't it?

Mr. LeSourd: I want to be sure, your Honor, that our objection runs to this. As we said before, it is all irrelevant and immaterial, and improper cross-examination, and outside the period, and——

The Court: (Interposing) What is the date of it?

Mr. LeSourd: If the Court lets it in, we want our record to show all this.

Mr. Griffin: March 10, 1950. This is within the Indictment period; prior to March 15th.

The Court: I will sustain objection until a further showing is made.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: By questions and answers, he attempted to bring out what he claims to be a situation in 1950, and it is highly prejudicial, your Honor, and over our objection.

The Court: Well, I will hear further from Counsel. [4403]

However, as far as the Jury is concerned, any evidence up to this time in regard to this check should be disregarded by the Jury, and, unless subsequently the Court considers a matter, that does not come in as evidence.

Mr. Griffin: Does your Honor understand my position without stating it?

The Court: I don't want to make a final ruling until I give you an opportunity, but to avoid any possible misunderstanding, I have given the Jury that instruction.

Mr. Griffin: You don't want me to state the position?

The Court: I suggest you pass it, if you can.

Mr. Griffin: All right.

The Court: (Continuing) Until you finish, or at least, until recess.

Q. (By Mr. Griffin): Mr. Taylor, the trust, from the time it was established, had a separate trust bank account in the Peoples National Bank of Washington, did it not?

Mr. LeSourd: Your Honor, it is understood that our objection is continuing on the same grounds previously stated?

(Testimony of L. Hicks Taylor.)

Mr. Moriarty: The Government joins in the [4404] objection.

The Court: Well, the Court doesn't know the purpose, and in cross-examination, cannot go into the purpose of every question, and there may be many matters gone into in cross-examination that may go to various proper items, and, therefore, the Court isn't going to sustain the objection at this time. If it appears it is improper, the Court will ask him that it be stricken, and so instruct the jury. You may proceed.

Q. (By Mr. Griffin continuing): And you had a personal bank account in the Peoples National Bank of Washington, at the same time? A. Yes.

Mr. Griffin: Now, in the absence of the Jury, I will state the purpose of the interrogation, if the Court please.

May I see the tax returns, if the Court please, of Forster, personally?

The Clerk: That is one, two and three?

Mr. Griffin: That is Exhibit 3.

Q. (By Mr. Griffin): Mr. Taylor, in the tax return of Hans Forster, as filed for the year 1947, being Exhibit 3, you increased the sales—— [4405]

Mr. Griffin: This is coming off.

(Whereupon, the Clerk stapled the exhibit together.)

Q. (By Mr. Griffin continuing): ——you increased the sales, that is, Alpine Dairy, by thirteen thousand dollars over the amount appearing in your work sheets and the general ledger, didn't you?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Objected to, your Honor, as improper cross-examination, and irrelevant.

The Court: Objection overruled.

A. That is rather hard to answer from just a plain question. It would need some work sheets or something else to refresh my memory.

Mr. Griffin: The general ledger is 72?

The Clerk: Here it is.

The Witness: Do you have the work sheet?

Q. (By Mr. Griffin): Well, you can examine the ledger on that question without the work sheet, can't you, Mr. Taylor? A. We will see.

Q. Now, so that we know, Exhibit 3——

The Court: (Interposing) The ledger exhibit is number?

The Clerk: 272. [4406]

The Witness: 272.

(Whereupon, there was brief pause.)

The Witness: (Continuing) That is correct.

Q. (By Mr. Griffin): Why did you change the tax return, which you say is based upon the general ledger, in that item of $13,000, different from your general ledger?

A. That was an adjustment relative to either the schools or a group of loans were not set up. One or the other. I am not positive.

Q. One of your manipulation of figures?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): Well, that is

(Testimony of L. Hicks Taylor.)

what you did, wasn't it, Mr. Taylor, to change figures?

A. It is a fact that I changed, yes, the figure that belonged in the books.

Q. You did not change the ledger, did you?

A. I probably didn't go back and post the entry from the work sheet, no, which has been done a numbers of years here.

Q. It was your custom, month by month, and year-end, to analyze and change figures, wasn't it?

A. Only where it came to my attention.

Q. Where it—whether it was sales, inventory, depreciation, accounts payable, or accounts receivable, you did it right along, didn't you?

A. No, I did not.

Q. Did you at any time reconcile the bank accounts, cash in bank, Issaquah Creamery, with your ledger? A. I did not.

Q. Or of Alpine? A. I did not.

Q. Or of any of the Forster enterprises?

A. Oh, I would say some, I did, yes.

Q. What ones?

A. Where I didn't have people that were competent to do it, I did it.

Q. In which enterprises of Mr. Forster did you reconcile the bank account against the ledger kept by you?

A. A very good example is the Renton Ice and Ice Cream.

Q. You did that on each statement?

A. As far as I can remember, yes.

(Testimony of L. Hicks Taylor.)

Q. Why did you do it?

A. Because I didn't have someone competent to do [4408] the job down there.

Q. You recognized then that there should be reconciliation definitely between bank accounts, cash on hand, and the ledger, didn't you?

A. I practised accounting thirty years. I know some of the principles, but that wasn't my assignment with the Issaquah Creamery and the Alpine Dairy.

Q. You knew and recognized the principle of the necessity of a reconciliation, didn't you?

A. It was not my duty, as I am telling you.

Q. My question is, Mr. Taylor, as an accountant, you knew the necessity of reconciliation between the bank account, cash on hand, and the ledger, didn't you? A. Yes.

Q. Mr Taylor, you kept the ledger under your control in your office, didn't you?

A. Correct.

Q. How could Harold Erickson at Issaquah reconcile the bank account with the ledger kept in your office and under your control?

A. Mr. Griffin, Mr. Erickson's bank account and mine were always in agreement.

Q. With minus cash?

A. Minus cash is something altogether different than a bank account.

Q. Did you reconcile them then, Mr. Taylor?

A. I did not. I have admitted I did not reconcile the banks.

(Testimony of L. Hicks Taylor.)

Q. All right; you say that your ledger was in acordance with Mr. Erickson's what?

A. Journal.

Q. Journal; well, it had to be if you just copied the figures from the journal into the ledger, didn't it? And copied them correctly?

A. Correctly?

Q. Yes; there wasn't anything to do with reconciliation as between the bank account, the journal and the ledger, was there? You simply copied figures?

A. They were supposed to have been reconciled for me.

Q. When, to your knowledge, Mr. Taylor, did Mr. Erickson ever reconcile the bank account with his figures in the journals?

A. I don't recollect.

Q. When did you ever inquire of Mr. Erickson whether he had reconciled the bank account with the figures in the journal, if ever?

A. That I don't remember.

Q. Also, it is necessary to reconcile accounts payable, and accounts receivable?

A. Sure; that is the office force's duty. It [4410] wasn't mine.

Q. The office force of which you have stated that you considered Mr. Erickson competent?

A. I think so.

Q. And employes under him competent?

A. As far as I know.

Q. And you relied on them, did you?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. Just as Mr. Forster relied on you, is that right?

A. I would say that Mr. Forster relied on the whole organization. He was at the head of it.

Q. To your knowledge, Mr. Taylor, were the accounts receivable and the accounts payable of the Issaquah Creamery ever reconciled?

A. One that I know of is one that I did myself in 1932, I believe.

Q. 1932; subsequent to 1932—22 years ago—do you know of any reconciliation of accounts receivable and accounts payable of Issaquah Creamery?

A. No, I do not.

Q. Alpine Dairy?

A. No; Alpine Dairy accounts receivable reconcile continuously.

Q. Did you reconcile the so-called "paid-outs" [4411] and "paid-ins"?

A. The "paid-outs" and "paid-ins" were properly taken care of in those records.

Q. You checked them, did you?

A. No, I did not check them. Mrs. Wilcox had charge of the office, and knew what she was doing.

Q. Just the same as Mr. Erickson knew what he was doing? A. Absolutely.

Q. Do you say now that the accounts receivable and accounts payable were reconciled at Alpine Dairy?

A. There was a running reconciliation kept of those accounts.

(Testimony of L. Hicks Taylor.)

Q. By whom? A. Mrs. Wilcox.

Q. But not at Issaquah; is that right?

A. No; accounts receivable, I do not know much about what happened at Issaquah.

Q. Well, the Alpine Dairy accounts payable were payable through Issaquah, weren't they?

A. That is correct.

Q. Why didn't you see to it, then, Mr. Taylor, that there was a reconciliation at Issaquah, at least, of the Alpine Dairy payables?

A. I accepted the figures given to me. I did not [4412] audit those books at any time.

Q. And you proceeded on the basis that Mr. Forster owed a higher duty than you owed him as an accountant, is that correct?

A. I gave him the service that he requested.

Q. We went into the matter of your original employment, Mr. Taylor. Was there ever any change?

A. We started in 1940 with a proper assignment, yes.

Q. You started in 1932, didn't you?

A. That was not the same assignment as 1940.

Q. Mr. Taylor, is it your testimony that in your relationship to Mr. Forster professionally that he owed you a greater duty than you owed him?

A. I would say "no", that we owed it equally to each other.

Q. You owed a duty to him, to see that he made correct income tax returns, didn't you?

A. And my tax returns agreed with the ledger.

(Testimony of L. Hicks Taylor.)

Q. And your ledger agreed with nothing, did they, Mr. Taylor, except themselves at times?

A. I disagree with you on that.

Q. You didn't record the acquisition of the Daisy Ice Cream Company on the books of Alpine until January 31, 1946, did you? [4413]

A. That I cannot say; I don't remember.

Q. Well, you handled the purchase of the Daisy Ice Cream, didn't you, as you heretofore testified?

A. Yes, I handled the operation, yes.

Q. And that was May 1, 1934, wasn't it?

A. When was it?

Q. 1944?

A. I guess so. I have forgotten definitely.

Q. Why did you delay between May 1, 1934, and assume my date is correct, and January 1, 1946——

Mr. LeSourd: (Interposing) Just a moment.

Mr. Griffin: Just a moment, Mr. LeSourd.

Q. (By Mr. Griffin continuing): ——in entering the acquisition of Daisy Ice Cream Company as an asset in Mr. Forster's enterprises?

Mr. LeSourd: Object to the form of the question. It can't be asked on Mr. Griffin's assumption. He can be asked what he knows, or what the facts are.

Mr. Griffin: I will withdraw the question. I don't intentionally misrepresent to the Court.

Q. (By Mr. Griffin): Mr. Taylor, what period of time elapsed approximately before you entered Daisy Ice Cream as an [4414] asset upon the books of Alpine Dairy? A. I don't remember.

Q. Several months? A. I don't know.

(Testimony of L. Hicks Taylor.)

Q. Mr. Taylor, without a reconciliation at Issaquah of payables, how could Mr. Forster know that items chargeable to his drawing account personally were charged otherwise; how could he know?

A. I don't know.

Q. Mr. Taylor, upon the Alpine Dairy ledger, did you charge or credit donations to advertising?

A. Not to my knowledge.

Q. Did you credit donations at all?

A. They were handled through Mr. Erickson's journals, and charged to whatever account was proper, so far as I know.

Q. You never went into those accounts?

A. I did not. I was not auditing those books.

Q. I am not asking——

A. (Interposing) I am answering that way.

Q. You were not auditing books, but you were analyzing figures, is that it?

A. After they came into my possession.

Q. And no analysis that you ever made ever caused you to go back and look into the books of either Issaquah [4415] Creamery or Alpine Dairy to find the basis of why you had to analyze, is that right?

A. I never analyzed from the books. I analyzed from the figures I took for the general ledger.

Q. But, I say, nothing——

Mr. Griffin: (Interposing) Strike that.

Q. (By Mr. Griffin continuing): You analyzed them year after year from the figures you had?

A. From my ledger, yes.

(Testimony of L. Hicks Taylor.)

Q. Mr. Taylor, what was the purpose of that analysis?

A. To analyze the operation for the year, increase and decrease in net worth.

Q. Is that your complete answer?

A. It is enough, yes.

Q. What was the purpose of analysis of the monthly statements?

A. To give Mr. Forster an idea of his progress.

Q. Well, how could he have an idea of his progress, Mr. Taylor, if Mr. Erickson showed certain inventory—actual figures—and showed certain sales and you analyzed and changed those figures? How could that help or show Mr. Forster his progress, or lack of progress? [4416]

Mr. LeSourd: If your Honor please, may the record show our objection, the same objection as before, to this line of questioning—irrelevant and immaterial, and improper cross-examination?

The Court: I might say it seems to be extending longer than I thought. When I consider how far we have gone with this, Mr. Griffin, I am inclined to put some limitation upon it. I will overrule the objection.

Mr. Griffin: I agree with your Honor. I agree. Did you sustain objection to my question?

The Court: No, I didn't sustain objection. Do you wish the question?

The Witness: I think so.

The Court: Mr. Reporter, read the question.

(Testimony of L. Hicks Taylor.)

(Whereupon, preceding question was read by the reporter.)

A. No figures were changed from the figures actually presented.

Q. (By Mr. Griffin): Mr. Taylor, can there be negative cash?

A. Yes, you bet you, there can be negative cash.

Mr. LeSourd: Just a minute, your Honor. The answer came before I could object. I want [4417] my same objection to show and move to strike the objection and answer on the same ground.

The Court: The answer having been given the Court would deny the motion.

Q. (By Mr. Griffin): That is, a business may have actually ten dollars or ten thousand dollars in cash, physical cash, and it could still be negative cash, is that right?

Mr. LeSourd: Just a moment. May we have a continuing objection to this, to save interrupting?

The Court: The Court will sustain objection if you object to this question.

Mr. LeSourd: Well, I object to it on the same grounds.

Q. (By Mr. Griffin): Can there be negative cash where physically there is actual cash?

Mr. LeSourd: Same objection.

The Court: Wasn't this covered, Mr. Griffin, earlier?

Mr. Griffin: Not with this witness to my recollection.

(Testimony of L. Hicks Taylor.)

The Court: Didn't you cover it in part with negative inventory?

Mr. Griffin: Negative inventory is entirely different [4418] from negative cash.

The Court: Wasn't this covered in part at the same time?

Mr. Griffin: I didn't mean to, if I did.

The Court: Mr. LeSourd's objection is on another ground, isn't that right?

Mr. LeSourd: My objection is, it is improper examination and irrelevant and immaterial to the case.

The Court: Objection overruled.

The Witness: May I have that question now?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. That is an answer of "yes" and "no." It takes two answers to answer that question.

Many sets of books contain what they call a petty cash account, which is the drawer cash, or the cash lying in the business from which small expenditures are made from. That particular cash account is a definite and conservative account, replaced as a rule every three days, to bring it to a certain balance. That cannot have a negative cash.

The cash account generally carried in the ledger is like any account of a business. Through application of certain collections, certain cash items [4419] transferred to the bank before they are entered on the detailed books, you take your journal, apply

(Testimony of L. Hicks Taylor.)

your deposits—and many times your cash account will show a credit which is not an error. It is merely the fact of the delay in entering cash receipts and crediting it to sales or to accounts receivable. It does not mean there are any errors in the books. It does not affect the income tax in any way. It is merely a book entry upon which adjustment is made, and if it cannot be adjusted, it must be developed and created into some other type of an account, such as an account payable, note payable, or some other type of an account.

Q. Mr. Taylor, you did not include the Werner-Murphy note as upon the books of Alpine Dairy, did you? By "books" now, I am referring to the ledger.

Mr. LeSourd: Objected to, your Honor, improper cross-examination and irrelevant and immaterial.

The Court: I will sustain the objection.

Mr. Griffin: I would like to talk to you about this for about two minutes, if you would like to adjourn now.

The Court: All right.

Mr. Griffin: I would like to show a continuity, believe it or not, for the purpose of getting through.

The Court: Ladies and Gentlemen of the Jury: We will adjourn now until tomorrow morning at 10:00 o'clock, and the Court calls your attention to the admonition given on previous occasions, and asks that you heed it on this occasion.

(Whereupon, the Jury retired from the court room.)

The Court: It is stipulated the Jury have left the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

Mr. Griffin: I assume, your Honor might think that was going afield. The point is different in regard to that item. What Mr. Taylor did—I make the statement now, and he can be prepared tomorrow, if you change your mind—the evidence in chief of the Government showed the Werner-Murphy indebtedness, and the interest connected with it. Werner-Murphy are the Basketball——

The Court: (Interposing) Yes.

Mr. Griffin: Yes. Mr. Taylor did not enter that note as an asset upon the books of the Alpine Dairy, but he did deduct it—deducted the five thousand portion of that item from the income of Alpine Dairy. He didn't record it in the general ledger. It is just one of those items which he did with figures whatever he saw fit,—now, in the absence of the Jury,—in the [4421] manipulation of income and expense. It goes to that kind of sloppy bookkeeping, and I will use that term because I will have it tomorrow when I reach that phase of this matter with Mr. Kachlein.

Now, it seems to me that that is material. It is one item that is direct. The documents are in evidence. The Werner-Murphy note is part of the Government's case, and one of the items going into unpaid income.

Mr. Patten: Net worth.

Mr. Griffin: Net worth. And I propose to show,

if permitted, just how Mr. Taylor lackadaisically handled the matter. That is No. 1.

No. 2: On the $500 check that you are holding in reserve, the trust check, I take it, the fact that Mr. Taylor took and cashed $500 in trust funds out of this trust account goes to his credibility, if nothing else.

This $500 is one of $1500 missing from that account, of which we were able to find only this $500 check. The other two checks, we could not find. It seems to me that that goes directly to credibility.

The Court: On that matter, Mr. Griffin, if it were admitted, wouldn't it introduce another issue? Wouldn't they be in a position to go into that matter?

Mr. Griffin: I would say that he could go into it [4422] and explain what he did with $500 in trust funds.

The Court: Well, it seems to me, without knowing, of course, what the circumstances are, that it is one of those matters that may add to an already heavily burdened——

Mr. Griffin: (Interposing) I appreciate that, but my position is this, in regard to that particular item, and it goes to the heart of this case:

It seems to me, from the Jury's standpoint, when we are through, that the trust and confidence that Mr. Forster placed in this man is evidenced in one item, by naming him as trustee of this trust, and where that trustee takes a trust check belonging to the trust, and deposits it to his personal account, it is very material. When that is discovered, if the

Court please, as to why—and it wasn't discovered until after this accounting was had,—as to why Mr. Forster lost faith subsequent to April 21, 1949 —1950—in Mr. Taylor.

Mr. Taylor's defense here has been an attack upon Mr. Kachlein throughout.

The Court: I understand, and that is the basis upon which much of this testimony has come in.

Mr. Griffin: And that is one of the things, perhaps, as much as anything else, because irrespective of what a Jury may think when we are through, Mr. Forster [4423] doesn't understand very much what he has heard in this courtroom about the books, but he did understand that when a man takes $500 from a trust fund he has set up for his children, he has lost faith in that individual.

That is those two items.

I appreciate your Honor's position in that matter. I think on that one, it is very important. Mr. Taylor may have an explanation. I don't know.

Mr. Moriarty: The Government strongly objects to this item.

The Court: Speaking of the check?

Mr. Moriarty: On the check and the inference that follows, and it is after the Indictment period and similar acts wouldn't have anything to do with this. It would be prejudicial to Mr. Taylor, and the Government is interested in protecting this record.

The Court: I understand. I hope you are, Mr. Moriarty. In admitting a certain amount of this testimony on cross-examination, one basis for it has

been the attack on Mr. Forster's defense, and I think I have permitted a wide latitude, which I know Mr. LeSourd agrees with, the fact that there has been wide latitude. I do feel there has to be some limitation on the matter, and that is why I think the time has come where we have to sustain objection to some of these individual items that possibly could come in on the same theory, but inasmuch as [4424] time is passing, and we have gone over a very—the books, I think, quite extensively, and all the transactions, I believe that the Court is justified, and should restrict now any item other than those that might be very material and relevant to a particular defense, or issue, involved, and I am inclined to adhere to both of my rulings.

Mr. LeSourd: If the Court please, I have a motion for mis-trial to make. Do you wish to hear it now, or in the morning?

The Court: If you wish.

Mr. LeSourd: It makes no difference.

The Court: We might as well hear it now.

Mr. LeSourd: Yes. The Defendant Taylor, your Honor, at this time moves for a mis-trial on the following several grounds:

The first is that over our continuing objection Mr. Griffin was permitted to ask questions and elicit answers with regard to the Hans Forster trust, the taxes on which are not involved here, and particularly with regard to the asserted diversion of a $500 check in 1950, and we feel that your Honor's later caution to the jury, however proper, still does not

relieve the situation of its prejudicial effect so far as this defendant is concerned. [4425]

A second ground for our motion is the fact that continually Mr. Griffin in his examination has brought out information from documents which were not admitted, and many of which were later not admitted, by his manner of questioning, which we think is highly improper and prejudicial, and is grounds for a mis-trial.

Certainly, your Honor, it would be grounds for a mis-trial if done by the prosecuting official, and we feel Mr. Griffin is in the same shoes as far as this defendant is concerned, and many of the questions which Mr. Griffin has asked, were highly prejudicial, and likewise grounds for a mis-trial if done by the prosecuting or district attorney, and I think the same situation exists here.

And another ground is that this witness has been required to go far beyond his direct examination in answering questions about a myriad of matters that have nothing to do with the matters covered in the scope of his direct examination, and have nothing to do with the issues actually involved here in this case.

The Court: Well, the Court will deny the motion.

As I have indicated, I realize that the scope permitted [4426] on cross-examination of this witness, has been broader than it might have been under other circumstances. I feel, in the nature of the case, and the nature of the position of the parties, that the defense has made, and the charge as made

against the defendants, makes advisable and proper the evidence permitted.

Considering other grounds, the Court likewise calls attention to the fact that cross-examination of a witness on the stand, such as Mr. Taylor, or anyone similarly situated, requires a rather exhaustive and unusual cross-examination to bring out. [4427]

* * * * *

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination—(Continued)

Q. (By Mr. Griffin): Mr. Taylor, you prepared a balance sheet, Issaquah Creamery, for November, 1949, did you not?

A. Yes, as I recollect.

Q. And for December, 1949?

A. Yes, as I recollect.

Q. And a year-end statement for the year 1949?

A. Yes, as I recollect, that is true.

Q. Now, as I recall your testimony on the last Saturday in January, 1950, you went out to Issaquah Creamery as usual, at which time you prepared your work sheet for December; was that correct? A. Yes.

Q. November—the month of November, 1949, showed a loss of approximately ten thousand dollars, did it not?

A. I would like to see the sheet to pass on it, please.

(Testimony of L. Hicks Taylor.)

Q. I am handing you Exhibit 259-A, and the actual amount, $9,953.62; correct? [4436]

A. Yes, it showed a loss of $9,953.62.

Q. And the month of December, as you computed the matter, showed a profit of approximately twenty thousand dollars; is that correct?

A. May I see the exhibit, please?

Q. Have you——

Mr. LeSourd: (Interposing) Well, just a moment. Are you going to let him answer the question?

Mr. Griffin: I am not asking for an answer now.

Q. (By Mr. Griffin continuing): Have you—where, Mr. Taylor, would we find—you are asking for an exhibit—where would we find your work sheet for the month of December, 1949, if there was one?

A. Apparently that is the sheet you have right there.

Q. Well, Mr. Taylor, referring to Exhibit 259, Issaquah Creamery, this is what you call, is it not, and have testified to as the year-end statement, December 31, 1949?

A. Yes; this is a work sheet that displays the closing figure and the final figure of the Issaquah Creamery for December 31, 1949. There were probably typed reports made from this forwarded to Mr. Forster. [4437]

Q. There isn't anything on this sheet that you just requested, Exhibit 259, that shows either the profit or loss for the month of December, is there?

(Testimony of L. Hicks Taylor.)

A. No; as I have testified continually, I did not make separate monthly statements. They were cumulative statements for the year to date.

Q. Then my question, before your counsel interrupted me, was: Where, Mr. Taylor, would we find, if there was one, or did you make, a statement for the month of December, 1949 comparable to the one you made for November, 1949?

A. They have—those two statements are similar in effect. One is accumulated through November, and the other is accumulated through December.

Q. Correct, if so, but the November statement, as well as all of your monthly statements, carried either a profit or a loss for the month, didn't they?

A. Sometimes I marked the previous profit and showed a profit for the month, yes.

Q. Was there any monthly statement that you submitted over all these years, Mr. Taylor, in which you did not show the profit or loss for that month?

A. It is possible that I did it in all of them. I don't know.

Q. Yes. [4438]

A. I wouldn't from recollection know for sure.

Q. Mr. Taylor, in all the years that you prepared these statements, you have no recollection whether in your monthly statements you consistently showed either a profit or a loss; you have no recollection on it?

A. I didn't say I didn't have a recollection.

Q. Well, you have a recollection, then, that you

(Testimony of L. Hicks Taylor.)

did, on each monthly statement, show the profit and loss?

A. As far as I know, from recollection I did it each month. I didn't say I didn't do it.

Q. All right; now, have you any recollection whether you made a monthly statement for December, 1949?

A. I don't have a recollection of it, because it was the close of the year, and I don't believe it was necessary. I may have, and I may not. I am not sure.

Q. Have you any recollection as to what amount was either profit or loss in the month of December, 1949?

A. I recollect that I testified that the difference in the figures was somewhere near $25,000, if I remember right, loss.

Q. $25,000; $25,000 loss in December?

A. If I recollect correctly, yes.

Q. You heard Mr. Forster's testimony, did you, that your figures showed a profit of $20,000 in December? [4439]

A. I heard him testify to that, yes.

Q. And that he said to you there could not be a profit in December considering the loss in November; did he so state to you?

A. No, that was not in discussing that matter as I remember it.

Q. All right; now, as I understand your testimony in presenting, or, rather, in discussing——

Mr. Griffin: Strike that, if you will.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Griffin continuing): On this last Saturday in January of 1950, you would have before you, if I understand your testimony, your work sheet, perhaps, for November 30, 1949?

A. That is possible, yes.

Q. Mr.—you would have submitted to Mr. Forster the typewritten report for November, 1949?

That would have been submitted sometime—as I understand—in December, is that correct?

A. Yes, as near as I can remember.

Q. Exhibit 259, you would make up on this last Saturday in January out at Issaquah?

A. Yes, that is correct.

Q. And, of course, Mr. Forster would have no figures as to this year-end statement, or December statement, except as you advised him what [4440] your analysis was? A. That is correct.

Q. All right; so, as I understand your testimony, you advised him that—or, what did you tell him it looked like the profit was going to be for the year?

A. As I remember it, it was around $100,000.

Q. And that was after you carried a loss in November of $9,953.62 and $25,000 in December, is that right?

A. Well, the twenty-five is just a recollection.

Q. I understand that.

A. Yes, that is correct.

Q. And Mr. Forster said that that profit was impossible, is that correct?

A. As I remember, that was his remark, yes.

Q. That it was not in the cards to make that

(Testimony of L. Hicks Taylor.)

much money? A. Yes, that is true.

Q. That the sales for the year 1949 were approximately the same as the sales for the year 1948?

A. No, I am not sure that that was discussed.

Q. And he said that the costs of operation were approximately the same in 1949 as in 1948?

A. It is possible that it was discussed, but I do not remember that part of it. [4441]

Q. And he said to you that there must be a mistake somewhere?

A. That is correct. He made that statement.

Q. And you assured him there was not?

A. I assured him that those figures agreed with my ledger.

Q. And he said that he guessed he would have to get another accountant to check it, didn't he?

A. Not exactly that way. He said he thought he would get another accountant to check it.

Q. All right; he was very definite that there was something wrong with your bookkeeping at that point, wasn't he?

A. Not my bookkeeping. He said, with the profit.

Q. And you said that you would check it, didn't you? A. I did not.

Q. Did you check it? A. I did not.

Q. Didn't you testify that you went back to your office and you compared the 1948 sales with the 1949 sales? A. Yes, in March.

Q. And you found—that is what I am talking

(Testimony of L. Hicks Taylor.)

about—what you did—and you found that the difference [4442] —that there was two million three hundred and some odd thousand sales in one year, and two million another, and they were comparable? A. Yes, I testified I did that in March.

Q. And that your statement—or, you examined the income tax returns, didn't you, for 1948, or whatever you had to examine to ascertain what the net income was?

A. Yes, because it is necessary to have the previous year's tax return in front of you when you are making out the current year's tax return.

Q. And you found that the sales were the same and the cost approximately the same, and that your figures, at least, showed almost 100 per cent more profit in 1949 than in 1948, didn't you?

A. The first calculation would have shown that, yes.

Q. That is what I am referring to. The calculation that you calculated on this last Saturday in January out at Issaquah?

A. Yes, I will agree with you.

Q. Well, with the sales approximately the same, gross sales, and the cost of doing business approximately the same in the two years, were you at all disturbed about 100 per cent difference in net income according to the calculations for the year 1948, or 1949? [4443]

A. It did not disturb me, no.

Q. Well, you were quite tax conscious, were you not, Mr. Taylor, in January, February and March

(Testimony of L. Hicks Taylor.)

of 1950? A. Yes, most accountants are.

Q. You were particularly, weren't you?

A. Possibly at that time.

Q. Yes, and you were not then at all concerned with either Mr. Forster's complaint that a mistake had been made some place, and that at his suggestion, he would get another accountant, in effect, to find it if you didn't? A. He didn't.

Q. No, he didn't get another accountant, did he?

A. No.

Q. After going over the 1948 statement, as you retained it in your office, after you came back from Issaquah and in comparing it with your calculation that you made of $101,000 of profit, you called Mr. Erickson and told him to make at least a $50,000 change in either receivables or payables; didn't you? A. That is not true.

Q. Now, handing you Exhibit 259, that shows upon its face alterations, changes, of material figures, from the original, doesn't it? [4444]

A. That is correct.

Q. Who made those changes?

A. Nobody but me.

Q. When did you make them?

A. Sometime in March of 1950.

Q. And, as I understand your testimony, you examined no record, book or document at this time or immediately preceding the making, your changing these figures upon your work sheet?

A. Those figures were changed from figures presented to me.

(Testimony of L. Hicks Taylor.)

Q. My question is:

That you made no investigation, check, or anything else, of any book, document or record, of the Issaquah Creamery Company, at the time and immediately preceding your making those changes of figures, did you, Mr. Taylor?

A. No, I did not.

Q. And you were using and intended to use Exhibit 259 and the figures shown thereon for income tax purposes for the year 1949 in making the Issaquah Creamery Company return, weren't you?

A. Yes, I made it, and Mr. Forster approved it.

Q. You testified, as I understand, that you talked to Mr. Erickson and Mr. Erickson gave you a figure; is [4445] that correct? A. Yes.

Q. Do you recall what figure he gave you?

A. If you will show me the exhibit, I will read them to you.

Q. First, will you state the figure that you used on the last Saturday in January, 1950, and then give the change that you wrote in this exhibit 259?

(Whereupon, there was a brief pause.)

The Witness: I wish I could have that question again. I was calculating.

The Court: Mr. Griffin, do you want to restate it?

Q. (By Mr. Griffin continuing): Will you first read the figure you used in January, the last Saturday in January, 1950, Mr. Taylor, and then the changed figure that you inserted in 259?

A. From the best of my recollection, there might have been a slight difference of some kind in this

(Testimony of L. Hicks Taylor.)

figure, but to calculate it now, the net profit would have shown $101,304.24.

Q. What figure—what figures and what items did you change in 259; will you advise the Jury?

A. The application of an exact amount of [4446] change was $51,578.76.

Q. In what account was that, the milk purchase account?

A. That was in the accounts payable account.

Q. In the accounts payable? A. Yes.

Q. Did you in anywise analyze that accounts payable? A. I did not.

Q. Did Mr. Erickson advise you what to change that account to on your books?

A. Accounts payable, yes.

Q. Without any—just a lump sum accounts payable, and no analysis or advice from Erickson, just $51,578.76 accounts payable?

A. That is correct.

Q. You had no knowledge of what the accounts payable were and did not investigate?

A. I did not. That was Mr. Erickson's and Mr. Forster's responsibility.

Q. I think you said that Mr. Erickson also pointed out another error in your computation, is that correct? A. It is possible, yes.

Q. Is that a ten thousand dollar item? [4447]

A. It is possible that that was it.

Q. It was, wasn't it?

A. I do not remember just exactly.

Q. What was the item itself?

(Testimony of L. Hicks Taylor.)

A. If I remember rightly, it was an inventory item.

Q. An inventory item; what did you—now, do I understand that you changed your figures on Exhibit 259 accounts payable by 51,000 and some odd dollars? A. That is the exact change.

Q. Will you show that to me on here, please?

A. Here is the amount, right here (indicating).

Q. This is—do I understand that originally you had accounts payable $156,649.85?

A. I believe that includes the '51. I am not sure.

Q. To the right of that column, you have entered, and this is your own handwriting, is it not?

A. Correct.

Q. $51,578.76? A. Yes.

Q. And instead of surplus $55,436.54, you have written to the left, or to the right, under the fifty-one thousand dollars, ten thousand dollars, is that correct?

A. No, that is not correct. The ten thousand dollars [4448] was written opposite the account milk drafts.

Q. Oh, over here. I see. The two figures themselves manifestly you have changed, there was some figure before the fifty-five thousand?

A. It is my recollection that there was, yes.

Q. What was it? A. That I don't know.

Q. But, opposite the fifty-five thousand, under milk drafts, and underneath the fifty-one thousand, you wrote in ten thousand dollars?

A. That was for my information, yes.

(Testimony of L. Hicks Taylor.)

Q. And where did you get the information in regard to that ten thousand dollars?

A. Mr. Erickson gave me those figures.

Q. He gave you ten thousand dollars?

A. Yes.

Q. And then, after taxes payable, originally eight hundred sixty-eight dollars and ninety-eight cents, you have written in $19,703.—wait a minute. What has confused me, Mr. Taylor, some apply to this line and some to this one. This is all under the heading of Expenses, is it not, rather than taxes?

A. No, that is not. That is evidently in working out something I have accumulated some figures and wrote the amount there. I don't know what they comprise. [4449]

Q. And the amount is $197,039.06?

A. Yes. It is meaningless as far as this statement is concerned.

Q. What was the original inventory upon this statement? A. $12,978.90.

Q. You have written in—you have changed that figure, the figure "1" on the twelve thousand to a "2", is that correct? A. That is correct.

Q. And, in the column where you were making these changes, you wrote in $32,978.90, is that right?

A. That is a figure written there, but it is not the inventory used.

Q. What inventory was used?

A. $22,978.90.

Q. And you have another figure here, $230,675.32 written in; what was that figure?

(Testimony of L. Hicks Taylor.)

A. From glancing at it, I would say that that was an accumulation of some of these figures into one for the tax return, or for some other purpose. It is meaningless so far as this statement was concerned.

Q. Mr. Taylor, the changes that you made of the Exhibit 259, considering how you handled it, actually made a reduction in income not of $51,578.76, but of [4450] approximately seventy thousand dollars, didn't it?

A. No, that is not true.

Q. Well, bills payable was one item, $51,578.76, isn't it? A. Correct.

Q. Inventory $10,000? A. Increase.

Q. What does that do?

A. That reduces $51,000 to $41,000.

Q. Where did you bring it back?

A. Inventory was increased ten thousand dollars.

Q. Inventory increased ten thousand dollars; you say, reduces this item from fifty-one to forty-one? A. Yes.

Q. All right; what did you—what else did you do in the shifting of figures to change the amount of income, net?

A. Drafts payable were increased ten thousand to bring back this $51,578.76.

Q. There couldn't be any—if there was a certain amount of drafts payable, there couldn't be ten thousand dollars more or less, could there?

(Testimony of L. Hicks Taylor.)

A. This exhibit displays that there was ten thousand more. [4451]

Q. Where did you get that information?

A. Mr. Erickson.

Q. All right; you talked to Mr. Erickson then about drafts payable, did you, on this occasion?

A. Talked about it?

Q. Yes.

A. He gave me an amount to add.

Q. He gave you an inventory figure, didn't he?

A. Correct.

Q. You increased that inventory figure by ten thousand dollars, didn't you?

A. I did not.

Q. I thought you said inventory was increased?

A. I increased it by the figure given me.

Q. When you first entered the inventory, you had no inventory figure?

A. Yes, I had an inventory figure.

Q. All right; what was it?

A. $12,978.90.

Q. And you—then Mr. Erickson gave you a new figure? A. Correct.

Q. Was that on the telephone?

A. No, it was not on the telephone.

Q. When did he give you a new figure? [4452]

A. In March, 1950.

Q. In March, 1950? A. Yes.

Q. And when did he give you the figure fifty-one thousand something?

A. The very same day.

(Testimony of L. Hicks Taylor.)

Q. The same day?

A. The same time.

Q. And when did he give you a new figure on drafts payable? A. That very same time.

Q. That very same time? A. Yes.

Q. All three at the same time?

A. That is correct.

Q. And, as you have said, you checked none of those or analyzed none of them?

A. I did not.

Q. You knew absolutely nothing about them except as he gave them to you, is that right?

A. Because it was not part of my assignment.

Q. My question is:

You knew absolutely nothing about them except as he gave them to you?

A. Mr. Forster and Mr. Erickson I understand checked them out. [4453]

Mr. Griffin: May the question be read, if the Court please?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) I accepted them that way, yes.

Q. (By Mr. Griffin): Did you examine Mr. Erickson's sales analysis sheets——

A. (Interposing) I did not.

Q. (Continuing) ——on these items?

A. I did not.

Q. You knew that these changed figures that you were using affected income and income tax of

(Testimony of L. Hicks Taylor.)

the Issaquah Creamery Company for the year 1949, didn't you?

A. Yes, they affected it.

Q. And you knew that they affected it very materially by decreasing, at least, that tax, by fifty per cent?

A. That would be the approximate, yes.

Q. And notwithstanding that this was March, 1950, you didn't do a thing about it, as I understand your testimony, except to make the change on that sheet in March, 1950; is that right, and prepared the tax [4454] returns, Mr. Taylor, accordingly? A. That is correct.

Q. And you called Mr. Forster down by telephone, you said, and told him the amount of check to bring in and to sign the return?

A. That I don't recollect exactly.

Q. You recall so testifying?

A. He came to my office to sign the tax return.

Q. Did you 'phone him the amount of the check to bring in and to sign the return?

A. Oh, it is possible that I did.

Q. And you explained to him at that time these changes that you had made?

A. That is correct.

Q. And told him that he and Erickson would have to be responsible for it?

A. Would have to substantiate the changes, yes.

Q. What do you mean by that, Mr. Taylor?

A. Well, I meant that I had changed my ledger,

(Testimony of L. Hicks Taylor.)

and it would probably be noticed by anyone examining it.

Q. And you knew that you would not be here to carry on the work at that time, didn't you?

A. That I did not know particularly.

Q. So, you did make the changes in your ledger, did you, Mr. Taylor? [4455]

A. As far as I remember, yes.

Mr. Griffin: May I see 271, please?

Mr. Brody: Here it is (indicating).

(Whereupon, exhibit was handed to Mr. Griffin by Mr. Brody.)

Q. (By Mr. Griffin): Now, Mr. Taylor, you testified twice this morning on my examination that on this fifty-one thousand dollar accounts payable, you didn't analyze it, and you didn't know anything about it except as a figure given you by Mr. Erickson; is that still correct? A. Yes.

Q. Then, why, Mr. Taylor, on your ledger, did you divide that fifty-one thousand dollars between certain items of accounts payable?

A. May I look at the ledger?

Q. Do you recall whether you did or not?

A. No.

Q. And, if you did, it was for the purpose of concealing it, wasn't it?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): Will you look at your ledger, [4456] 271, and read to the jury what you did on your ledger with these items of

(Testimony of L. Hicks Taylor.)

which you knew absolutely nothing except as given to you?

A. The ledger account of December 31 was posted $98,616.29.

Q. To what account did you change on your ledger and make the entry in your handwriting of this fifty-one thousand dollars?

A. I didn't make it as a separate entry.

Q. No, but you knew nothing about it, and what did you do? Tell the Jury what you did from your ledger with it.

A. What do you mean, what I did with my ledger with it?

Q. How did you enter the $51,000 in your ledger?

A. It is entered in an accumulation of $98,-616.29.

Q. You entered a portion of it to butter purchases, didn't you? A. Yes.

Q. You charged in your ledger that $51,000 item as follows, did you not, sir:

You charged milk purchases, $5,000?

A. So it appears, yes.

Q. In your own handwriting? [4457]

A. Sure.

Q. You charged butter purchases, $41,578.76, didn't you?

A. There isn't anything that displays that here.

Q. What did you charge to butter?

A. I don't know. I can't tell.

Q. You can't tell from your ledger?

(Testimony of L. Hicks Taylor.)

A. I can't tell how it was distributed.

Q. And you charged ten thousand dollars of it to miscellaneous, didn't you?

A. That I cannot tell you. There are a number of items here that have been changed. Possibly some from some other source.

Q. You can't analyze your own ledger, is that the situation, sir? A. The facts are here.

Q. All right; what were the facts in your——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): I think, Mr. Taylor, that you testified that you held the ledger open until Mr. Erickson could check back to see if there were any errors, is that correct?

A. I told Mr. Forster and Mr. Erickson that I would hold the ledger open until they checked out to see if there was any error. [4458]

Q. As a matter of fact, you didn't hold the ledger open because your ledger on its face shows that you recall the original figures that you had in the ledger, didn't you?

A. Yes, I so testified, that I changed the ledger to fit the charges.

Q. So that it wasn't held open; you had already made the entries, hadn't you, before you got the new figures?

A. No, I did not. I held the ledger open. The adjustments were made in March, 1950.

Q. Mr. Taylor, do I understand now, dealing with your ledger, Exhibit 271, for the month of December, 1949, you cannot find, tell, or analyze

(Testimony of L. Hicks Taylor.)

how you handled this fifty-one thousand some odd dollar item upon your ledger?

A. Not without some added work papers.

Q. What work papers did you have, or is there, other than Exhibit 259 in connection with this matter?

A. There were about six or seven cartons of work papers, and apparently they have been pulled apart to somebody's satisfaction.

Q. My question, Mr. Taylor, is:

What work papers did you make out in connection with the matter we are discussing other than Exhibit 259? [4459]

A. There would have been attached to this in the file—you see, this is perforated—there was probably a lot of papers with that in a jacket.

Q. Did you make out any work sheet, Mr. Taylor, showing these changes that you entered in the ledger?

A. I just—yes, I just testified that those contain all, but figured if I had the work sheet——

Q. (Interposing) As a matter of fact, you made the changes, Mr. Taylor, on Exhibit 259 in your own handwriting, didn't you?

A. For this particular purpose, Mr. Griffin, that is exactly what I did.

Q. Well, 259, and your ledger for the month of December—this is your work sheet, 259, with the changes on it in your own handwriting, isn't it?

A. Yes.

Q. All right, now——

(Testimony of L. Hicks Taylor.)

A. (Interposing) Mr. Griffin, I would like to finish this point.

Q. Certainly.

A. This book has a complete trial balance on it. The expense control. There is a work sheet that shows every item in there, and the adjustments made, if you will produce them from the files that I turned over.

Q. Handing you Exhibit 287, Mr. Taylor, I will ask [4460] you if that is the jacket from out of which came Exhibit 259?

A. That is correct.

Q. Now, will you take that jacket, Mr. Taylor, and advise the Jury what you did, to what accounts in your ledger you charged this item of, first, $51,578.76?

A. Mr. Griffin, this jacket is just like everything else you have presented me. It is partial in every respect. These things are never presented to me in their entirety. This is up to October, 1948, and many sheets have been taken out of this.

Q. There is nothing in the jacket, then, out of which this exhibit was taken?

A. That exhibit did come out of this jacket.

Q. I say, there is nothing in the jacket then, Exhibit 287, that in anywise helps you to determine what you did in the ledger with the fifty-one thousand?

A. No, apparently the only paper that you were interested in was this.

Q. Now, Mr. Taylor, while you cannot, you say,

(Testimony of L. Hicks Taylor.)

determine what you did with that fifty-one thousand on the ledger, does it occur to you that an accountant examining your work can determine what you did with it?

A. Mr. Griffin, I am going to answer that by "yes". [4461]

Q. All right.

A. (Continuing) My files were placed in shape that any accountant who has had more than a couple of years' experience could have picked up those work sheets and gone through these ledgers.

Q. Now, you have testified that of this item, you have charged to milk purchases, $5,000, you were able to get that from your ledger and work sheet, were you?

A. I was assuming that that charge was there, yes, from the looks of the account.

Q. I will ask you if you did not change over this item to the butter account, $41,578.76?

A. I cannot tell.

Q. And ten thousand dollars to "Miscellaneous"?

A. That I cannot tell.

Q. Would you say that you did not?

A. I don't know.

Mr. Griffin: Mr. Moriarty suggested a recess.

The Court: Ladies and Gentlemen of the Jury: We will take the mid-morning recess, and the Court calls you attention to the admonition given you on similar occasions and asks that you heed it on this occasion.

You may now be excused.

(Testimony of L. Hicks Taylor.)

(Whereupon, the Jury retired from the court room.) [4462]

(Whereupon, at 10:53 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:07 o'clock, a.m., April 22, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Taylor, is Plaintiff's Exhibit 213 the journal of Mr. Erickson for the month of November, journal kept by Mr. Erickson, months of November and December, 1949, Issaquah Creamery Company, from which you made your entries into the ledger?

A. This looks like the same one, yes.

Q. You find an entry, do you, November, 1949, Consolidated Dairy, $51,578.76?

A. Yes, it appears here.

Q. And does it appear again in December?

ing for it.

Q. Well, isn't that the book that you made your

A. I haven't examined this book so I am look-

(Testimony of L. Hicks Taylor.)

entries from, month by month, when you went out to Issaquah?

A. Yes; yes, that is true, but the figures you were referring to were given to me in March.

Q. 1950? A. That is right.

Q. Would there be any purpose if he gave you a figure of $51,000 for you to divide that up between certain accounts of which you knew nothing?

A. I didn't divide it up.

Q. I didn't ask you that. There wouldn't be any reason to, would there? A. No.

Q. The item was given to you as fifty-one thousand some odd dollars, milk purchases, accounts payable, is that right? A. Yes.

Q. And that is where it should go on your ledger, fifty-one thousand in the milk purchases, is that right?

Mr. LeSourd: Just a moment. Accounts payable.

Q. (By Mr. Griffin continuing): All right, accounts payable.

A. Yes, it was accounts payable.

Q. Accounts payable, or milk purchases, that is the way it was given to you, wasn't it?

A. I don't recollect just how it was described.

Q. Mr. Taylor, what—will you tell the Jury what, you personally, of your own knowledge and limited to that, called for complaint on your part against George Kachlein?

A. Mr. George Kachlein was employed by me in 1948 to assist me in a tax matter and performed for me in this tax controversy with the Internal

(Testimony of L. Hicks Taylor.)

Revenue and contacted Mr. Marx and Mr. McCarthy in October of 1949 and informed me that my case was hopeless and that I had committed a fraud and was an accountant and would not have very much defense and suggested that I could probably, by pleading guilty, get off for five to seven months.

March 2, 1950, he came to my house and took me to Tacoma and advised me that pleading guilty was best and less publicity, and I did plead guilty. On April—at his instigation—on April 25th I was sentenced to McNeil Island.

(Whereupon, the witness wept.)

The Court: Do you wish a recess, Mr. Taylor?

The Witness: No, that is not necessary. Just let me get back my composure.

A. (Continuing) Why, Mr. Kachlein served as my attorney, attempted in a lackadaisical way to try to file a protest on my tax liability, and sent that to the Island. I signed it and sent it back and it had no particular effect.

As I remember in June he prepared a codicil to my will and sent it to me.

As I remember in July he had me removed as the Trustee of the Forster Trust.

When,—in September, the 6th day of September Mr. Marx and Mr. Eppler and Mrs. Stokie came to the Island to see me on the Forster case and Mr. Eppler informed me that the accountants Touche, Niven, Bailey and Smart, that had been hired by Mr. Kachlein, had reported that there was approxi-

(Testimony of L. Hicks Taylor.)

mately one million dollars of unreported income.

Mr. Eppler asked me if I had a statement to make and I told him that I could not because I did not have legal counsel and he asked me who my legal counsel was, and I said, "Mr. Kachlein," and Mr. Eppler said, "Oh," as I remember it.

I immediately got up and left the room to [4466] their—I am afraid they were a little bit disturbed about it. I maybe was a little abrupt, but I was so perplexed and surprised at such a statement that I didn't know what to think.

I returned from the Island on September 10th. We, my wife met me and we had an appointment with Mr. Kachlein on the 13th, on Wednesday morning.

Tuesday before, I believe, Mr. Eppler and Mr. Marx tried to contact me at my office. I did not go to my office at the time. We went to Mr. Kachlein's office on the morning of the 13th. Mr. Kachlein was very strong in his statement that he did not want me to make a statement to the Internal Revenue Agents and to stay out of the way and to get out of town as soon as possible. My wife and I had definite plans for a short vacation, a thirty day trip, and in fact I even moved my car out of my garage so that the Agents would not know that I was home so that I would not be disturbed by them.

On the 14th, morning of the 14th, or afternoon, I won't say which for sure, I think it was afternoon, a Marshal's car drove in to my driveway. I knew then that I was quite sure that Mr. Marx

(Testimony of L. Hicks Taylor.)

and Mr. Eppler were making an effort to contact me. I went to the basement and I kept out of sight and I [4467] guess the door bell was not very loud because our lady that works with us was running the vacuum cleaner and apparently no one answered the door.

I had an appointment to go and talk to my sister who lives in another end of town and I went up the street and got my car and drove up there. Mr. Marx and Mr. Eppler, I believe, had just left when I left my sister's home—when I got there—by just a few minutes.

My wife and I stayed out of sight and we left very early the next morning and were gone until the 25th of October. All this time Mr. Kachlein was representing me as, I thought and definitely thought as my attorney. I contacted him and made an appointment with him on the, if my recollection is correct on the 27th day of October, 1950, at which time he informed me owing to the circumstances that it would be—he would be in the position that he would have to either release me from his representation, or release Mr. Forster. My release was granted that day. I employed Mr. LeSourd to represent me.

But, going back into this story a little further, one of the most important things that I think everybody should know, I had three men associated with me. [4468] I left them in charge of my office, distributed the business as best I could to the various ones. I left them a bank account to run. It had

(Testimony of L. Hicks Taylor.)

$3800.00 in it to operate with. These men were under agreement to me to draw two-thirds of their compensation and leave one-third in the bank account to cover expenses and possibly a dollar or two for me. Those two men, or three men, apparently were satisfied with the agreement but some time in May two of them went down to Mr. Kachlein's office and wanted to know what to do with the fees collected in my little business. Mr. Kachlein said that I was out of business, completely out of business, and that I would never practice again, and that I had made a lot of trouble for a lot of people and gave them a——

Q. (By Mr. Griffin): Mr. Taylor, I asked you of your own knowledge. I haven't interrupted you. You were not there. I want to limit this question, and you can answer as you see fit, to what you know personally, not what somebody told you.

A. I apologize if I am out of order, Mr. Griffin.

The net result of this memorandum letter was that the accountants should take all the fees and settle with me on my return. These accountants paid [4469] the expenses of my office and telephone, tax services, and various other things out of my $3800.00 and to this date I still have paid that bill. One of the men did eventually make a settlement of his account with me and that is the net result of the many things that happened that Mr. Kachlein mixed himself up in and put me out on a limb in many ways.

In another occasion that came up I had letters

(Testimony of L. Hicks Taylor.)

to the Island wanting to know what my brother was doing and I wrote back and told him to get in touch with Mr. Kachlein before he did anything, and then they ceased their operation.

Various things that were not very ethical in my observation of the situation.

Q. You consider yourself a pretty good judge of ethics, don't you, Mr. Taylor?

A. Yes, I think I do.

Q. Now, your first contact with Mr. Kachlein was in December, 1945, wasn't it?

A. Not relative to my own case.

Q. My question was: Your first contact with Mr. Kachlein was in December, 1946, when you called with reference to the formation of a family partnership matter?

A. I believe that I took him the account [4470] of the Pioneer Fruit Company at that time.

Q. The Pioneer Fruit Company; you were the accountant for that company, Mr. Taylor?

A. I was.

Q. And that company became involved with the tax authorities for the Federal Government, didn't it?

Mr. LeSourd: Objected to, your Honor, as completely irrelevant to the case.

The Court: Objection sustained.

Mr. Griffin: If the Court please, I am going, if I may, to the acquaintanceship of Mr. Kachlein, not limited to this matter but to two others only, and very briefly that they became involved and

(Testimony of L. Hicks Taylor.)

through that Mr. Kachlein learned how Mr. Taylor was operating. That is the purpose—as a background for the statement that Mr. Kachlein made, both in defense of Mr. Taylor and Mr. Forster said——

The Court: (Interposing) I might overrule the objection if it is limited to this one question.

Mr. Griffin: Thank you.

Q. (By Mr. Griffin continuing): They became involved in tax liability with the taxing authorities, Federal, [4471] didn't they?

Mr. LeSourd: Your Honor, may it be understood our objection continues to any testimony with regard to other concerns?

Mr. Moriarty: The Government joins in the objection to this line of testimony, that it is not proper cross examination.

The Court: I stated that the one question may be admissible. I will overrule the objection and if the matter continues Counsel may make objection if they feel it is objectionable.

You may proceed.

A. No, not involved. The question was——

Q. (By Mr. Griffin): Now, Mr. Taylor——

Mr. LeSourd: Let him explain.

Mr. Griffin: I have no objection but was just trying to comply with the Court's ruling. I have no objection at all.

The Court: You may proceed.

A. (Continuing) Not involved. It was a question

(Testimony of L. Hicks Taylor.)

of a family partnership relationship because one of the partners had been called into the Service.

Q. (By Mr. Griffin): That was the matter requiring eventually [4472] the services of Mr. Kachlein, wasn't it?

A. I took them to Mr. Kachlein, yes.

Q. And you continued to be the accountant?

A. Yes.

Q. Then you took Mr. Kachlein the matter of the business of a certain doctor here in Seattle who was also involved in a family partnership that you had organized, didn't you, Mr. Taylor?

Mr. LeSourd: Same objection.

Mr. Griffin: I will not mention the name unless necessary.

The Court: Objection overruled.

A. No, I did not frame that family partnership. I was merely their accountant.

Q. (By Mr. Griffin): And you referred that matter to Mr. Kachlein? A. I did.

Q. And that situation involved a period from around 1947 to 1952, controversy with the taxing authorities, Federal, didn't it?

A. Yes, and I believe Mr. Kachlein was paid for his services.

Q. There was another corporation involved, in dissolution, in that connection, wasn't there? [4473]

Mr. LeSourd: Same objection, your Honor.

Mr. Moriarty: The Government also objects, if your Honor please.

The Court: Objection overruled.

(Testimony of L. Hicks Taylor.)

A. I don't recollect.

Q. (By Mr. Griffin): Columbia Packing Company, Mr. Taylor; a partnership rather than a corporation, pardon me?

A. Well, Mr. Griffin, I took that account to Mr. Kachlein, yes, with my confidence in Mr. Kachlein.

Q. Certainly; so that prior to your contacting Mr. Kachlein in 1948 he had had association with you in these various matters, and your accounting practices, which involved matters with the Government and you were well acquainted with each other in that particular, is that correct?

A. I certainly agree to that, yes.

Q. And it was because you had confidence in the manner in which he handled these other matters that on or about July 30, 1948, you contacted him in your own matter of income tax evasion, didn't you? A. Somewhere around that date, yes.

Q. You advised Mr. Kachlein at that time that the [4474] Agents had contacted you and you needed help, didn't you?

A. I didn't state that I needed help. I asked his advice.

Q. That is, you asked his advice as to whether you could file an amended return, didn't you?

A. I had prepared an amended return showing differences of what I owed, yes.

Q. You advised him that your bank accounts did not balance with your books, didn't you?

A. I don't believe we had any books.

(Testimony of L. Hicks Taylor.)

Q. You didn't have any books; you had what you called—you didn't have a ledger, did you?

A. No, I did not.

Q. You had what you called a journal, or book of entry, didn't you?

A. No, I had a time book.

Q. A time book; your accounting system for yourself was not at all complicated was it, Mr. Taylor?

A. Well, if I had of kept it up it wouldn't have been, I expect, but it would have taken a lot of time.

Q. So, you didn't keep it up, did you?

A. I am afraid I didn't. [4475]

Q. And you advised Mr. Kachlein that you just guessed as to the amount of your income, didn't you?

A. Well, to some extent that is probably true.

Q. You advised him that the bad situation was this, did you not:

That you had deposit slips for your actual deposits in the bank of income received?

A. That is true.

Q. And that you had checked the matter, upon this call, and you were about fifty thousand dollars short in paying income tax, didn't you, of your own?

A. When you say fifty thousand dollars, are you referring—in how many years?

Q. In,—in the years of your eventual Indictment period.

A. 1942 through 1948, it is possible that my in-

(Testimony of L. Hicks Taylor.)

come was fifty thousand unreported, I do not remember.

Q. I didn't say income unreported, Mr. Taylor.

A. That is what I said.

Q. I said income tax unpaid.

A. No, that is not true.

Q. You advised him that as you checked [4476] this matter after the call from the Revenue Agents that you found you had been returning, or withholding, about forty per cent of your income from your tax returns for each year, didn't you?

A. No, I made no such statement.

Q. Anyway, Mr. Kachlein conferred with the Agents investigating to see if it would be all right for you to file an amended return and make an honest report, didn't he?

A. That is what he said he was doing. I don't know if he did or not.

Q. And he advised you that the Agents said they were going to proceed with their investigation no matter what you did?

A. Mr. McCarthy and Mr. Marx came to my home where I had taken my records and they expressed their desire to make their own investigation. It was nothing. Mr. Kachlein was there was all.

Q. Now, one reason that you employed Mr. Kachlein was because you had faith in his integrity and admiration for his ability, wasn't it?

A. That was true.

Q. And because you knew from experience the

(Testimony of L. Hicks Taylor.)

standing that he had with the Internal Revenue Service personnel? [4477]

A. I just assumed that he had a standing with the Department but nevertheless in handling the two or three protests that he filed I felt that he did a very satisfactory job.

Q. Now, Mr. Kachlein sat with you through the period that the Agents were investigating your returns, didn't he?

A. He was representing me at that time, yes.

Q. And then you were advised, or the Agents advised you, rather, and Mr. Kachlein that you owed additional taxes of $34,865.55, and penalties in the amount of eighteen thousand dollars, with a fifty percent—that would be interest—and a fifty per cent fraud penalty, didn't they?

Mr. Moriarty: Objected to as not proper cross examination.

The Court: I am inclined to sustain the objection as to the particular question.

Q. (By Mr. Griffin): You were advised by the Agents, you and Mr. Kachlein, that they were—that the Government was claiming a substantial sum of money due from you unpaid for income taxes and they deemed it fraudulent?

Mr. Moriarty: Same objection. [4478]

The Court: Objection overruled.

A. Yes, there was a substantial sum but that was not the final settlement sum.

Q. (By Mr. Griffin): Yes; I understand that. Now, as a matter of fact, you have testified time

(Testimony of L. Hicks Taylor.)

after time, Mr. Taylor, as I recall, that the figures shown in the income tax returns of all the Forster interests represented precisely the figures in your ledger kept by you? A. Yes.

Q. And as a matter of fact, Mr. Taylor, the figures in your personal income tax return represented the figures that you had in this journal, or time book, that you kept, didn't they?

A. No, they did not.

Q. Didn't you take the figures from your journal or time book to your income tax returns?

A. Possibly sometimes. I don't think they all agreed.

Q. You never reconciled your bank accounts with your journal, did you?

Mr. Moriarty: Objected to as not proper cross examination. He is referring to matters that are completely outside the issue here. [4479]

The Court: I will sustain the objection.

Q. (By Mr. Griffin continuing): Mr. Kachlein advised you, did he not, that you were pretty sloppy in your own bookkeeping?

A. No, he never did.

Q. And that you were very, very careless in your own bookkeeping? A. No, he did not.

Q. Were you?

Mr. Moriarty: Objected to as not proper cross examination.

The Court: Objection sustained.

Q. (By Mr. Griffin): He advised you to plead guilty, you say? A. He certainly did.

(Testimony of L. Hicks Taylor.)

Q. He advised you there wasn't any defense to what you had done?

A. He stated that he thought because I was an accountant, without very much of an analysis of my case that he advised me to plead guilty on one count.

Q. You were guilty, weren't you?

A. Mr. Griffin, I never in my life tried to cheat anybody at any time; it was just a careless situation that developed. [4480]

Q. Careless, you say?

A. Careless is right.

Q. Careless in returning—in underestimating your income to the Government, is that right?

Mr. Moriarty: Objected to as not proper cross examination.

The Court: Objection overruled.

A. I had many transactions that I was in that required many types of entries and bank accounts and it was not out of line that I should get mixed up in my figures. I believe that the Agents testified that I had thirteen bank accounts that were affected —that affected my income.

Q. You had thirteen bank accounts?

A. I believe that is what they said. I have forgotten exactly what they were.

Q. You know that Mr. Kachlein, in conference with the Revenue Agents and the Assistant United States District Attorney, worked out a plan for you by which, if you would plead guilty to one count,

(Testimony of L. Hicks Taylor.)

they would ask the Court to dismiss the other counts?

A. That was the understanding when I pleaded guilty, yes.

Q. And on March 2, 1950, you went to Tacoma with Mr. Kachlein and entered your plea of [4481] guilty, did you?

A. That is correct.

Q. And you met with the probation officer at that time?

Mr. Moriarty: Objected to as not proper cross examination.

The Court: Objection overruled.

A. Followed the regular procedure of sentence with the probation officer, yes.

Q. Now, prior to your going to Tacoma to enter your plea, Mr. Kachlein had prepared for you and submitted to the Internal Revenue Agents, Mr. Patten in charge, a statement of your position in the matter of the charges then being made, didn't he?

A. I don't know that I know what he filed.

Q. You told Mr. Kachlein that you had the financial burdens of your clients on your shoulders to such an extent that you neglected your own business, didn't you?

A. That is a very true statement. I had a large business and worked many hours every day.

Q. Mr. Taylor, did you or did you not read the memorandum which was supplied the Government in your behalf in your defense by Mr. Kachlein?

A. I do not remember of seeing it. I probably

(Testimony of L. Hicks Taylor.)

[4482] did but I don't recollect the contents. Let's put it that way.

Q. Now, at the time your investigation first began inquiries were made by the Agents at Issaquah seeking data, books and records, upon you, weren't they?

A. The Agents circularized all my accounts and obtained the income that they had paid me, if that will clear it.

Q. Mr. Forster asked you what the Agents were doing in calling Mr. Erickson for information, didn't he? A. That I do not remember.

Q. When this investigation of your personal tax began, Mr. Taylor, and the Agents requested information from Issaquah Creamery, or the Forster interests, you have no recollection of talking to Mr. Forster about it at all?

A. You didn't ask me that, but I believe that Mr. Forster—this was in, sometime in 1949 that this circularization started.

Q. Yes.

A. And I think that Mr. Forster asked me and I said, "It is a routine thing. I don't know what the results will be, so that you must comply with [4483] their request."

Q. You told him you weren't worried about it, didn't you?

A. I don't remember whether I told him that or not. It would naturally be the thing to say, wouldn't it, if I did?

(Testimony of L. Hicks Taylor.)

Q. And he asked you if there was anything wrong with his books, didn't he?

A. That is right.

Q. What did you tell him?

A. I told him I knew of nothing wrong with his books.

Q. And then with reference—you had no further conversation, or any questions asked by Mr. Forster, were there, in regard to your own income tax matter until after the newspapers published the matter of your plea of guilty in Tacoma on March 2, 1950? A. That is right.

Q. Then next when did you see Mr. Forster?

A. Probably at the end of that month.

Q. Not until the end of March?

A. Possibly. Maybe we went to Finstad and Utgard before that. I am not sure.

Q. And you went to Finstad and Utgard in [4484] January, did you not, 1950?

A. Yes, but this was March.

Q. I understand and in February, 1950?

A. Yes, so far as I remember.

Q. Now, was there any conversation on those two occasions, January or February, when you went to Finstad and Utgard with Mr. Forster?

A. I do not remember.

Q. Now, you did go to Finstad and Utgard with Mr. Forster sometime in March and after you had entered your plea of guilty, didn't you?

A. Yes.

Q. Did I understand you to say that some con-

(Testimony of L. Hicks Taylor.)

troversy arose between you and Mr. Forster on that occasion? A. I don't remember of it.

Q. You used the term, I think, "had words." I wasn't sure whether you meant an argument or you were just talking about conversation.

A. I don't remember of any words.

Q. All right; you did discuss, however, on that occasion the fact that you had pled guilty and doubtless would not be able to continue the work that you had been doing for the Forster enterprises, didn't you? [4485]

A. Yes, I think we discussed whether we would put one of the boys in the office on the job or not.

Q. And the matter for determination was left by Mr. Forster to you, wasn't it?

A. Mr. Forster said that Erick could take care of it.

Q. What did you say?

A. I said, "All right, it is O.K. by me."

Q. You thought he could, didn't you?

A. Yes.

Q. You thought he was capable? A. Yes.

Q. And honest? A. As far as I know.

Q. And the matter was left just that way, was it?

A. Well, we proceeded to turn the ledger over to Mr. Erickson on each of the jobs.

Q. Your last trip to Finstad and Utgard was in April, was it not?

A. April 21st, yes.

Q. April 21st; your purpose was to go up for—did you take the ledger up with you?

(Testimony of L. Hicks Taylor.)

A. The ledger and Mr. Erickson went along.

Q. That was the first time Mr. Erickson [4486] had gone along, was it?

A. He had gone along to the other places.

Q. I mean to Finstad and Utgard?

A. Yes, that is right.

Q. And you took the Finstad and Utgard ledger with you, did you? A. Yes.

Q. From your office? A. Yes.

Q. And you came back; and when you say that you went, you and Mr. Forster and Mr. Erickson were in the automobile together with Mr. Forster driving; is that right?

A. That is right.

Q. Did you give Mr. Erickson any instructions what to do?

A. He watched me do the work and followed through on it. I gave him whatever was necessary, I thought, to continue with the ledger.

Q. And what did you do with the ledger when you came back to Seattle?

A. As far as I know he took it on to Issaquah, as I remember.

Q. That would be April 21, 1950?

A. That is right. [4487]

Q. That was the first time that Finstad and Utgard ledger had been at Issaquah, as far as you know, wasn't it?

A. I believe that is correct, yes.

Q. Now, following March 2nd when you entered your plea of guilty down through March, down to

(Testimony of L. Hicks Taylor.)

the end of March, near the end, there had been no intimation of any kind, so far as you know, about any tax investigation of Mr. Forster or his interests, were there?

A. None that I had heard of.

Q. Who introduced Mr. Forster to Mr. Kachlein?

A. It is possible that Mr. Forster went with me to Mr. Kachlein's office and met him there.

Q. I am not talking about possibilities. You took Mr. Forster to Mr. Kachlein, didn't you, Mr. Taylor? A. It is possible.

Q. Well, did you?

A. I believe I introduced Mr. Forster to Mr. Kachlein, yes.

Q. When was that, Mr. Taylor?

A. If my recollection is right it was sometime in September, 1949? [4488]

Q. In connection with what matter was it, Mr. Taylor? A. With Finstad and Utgard.

Q. Well, I will ask you if that was not, and the first time that that matter arose was not, the latter part of March, 1950?

A. My recollection is that I delivered the minute book to Mr. Kachlein in September, 1949. That is my recollection of it.

Q. I am not asking you about the delivery of the minute book. I am asking you whether the first time that you introduced Mr. Forster to Mr. Kachlein was not on March 30, 1950?

A. That is not so.

(Testimony of L. Hicks Taylor.)

Q. Can you state anything in your——

A. (Interposing) I remember things that clear my mind as to when Mr. Forster—Mr. Forster informed me that Mr. Strack had taken his application in to the Rainier Club and that Mr. Kachlein was going to assist him in having his application accepted.

Q. All right; when was that?

A. That was in January or February, 1950.

Q. January or February, 1950, Mr. Kachlein, did you know, was upon the membership committee of the Rainier Club at that time? [4489]

A. That I wasn't sure of. I knew he was a member because I had met him over there.

Q. Now, was that the only thing that you have to fix a date prior to March 30, 1950, of your introduction?

A. Except that I delivered the minute book of Finstad and Utgard to Mr. Kachlein and I know it was after they met, in September.

Q. And you delivered the minute book after they met? A. That was in September.

Q. You delivered the minute book after they met because the Finstad and Utgard matter was under discussion?

A. Mr. Forster thought, from my recommendations, that Mr. Kachlein would make a good attorney and he thought that account would be one that he could turn over to Mr. Kachlein, and that was the reason.

Q. But the matter at issue in the Finstad and

(Testimony of L. Hicks Taylor.)

Utgard matter was the obtaining of the stock from out of escrow, the contracts having been fulfilled, wasn't it?

A. There was no issue at stake in any way when that minute book was delivered to Mr. Kachlein.

Q. Mr. Kachlein's first employment was to [4490] close up the Finstad and Utgard transaction by getting the stock out of escrow and to Mr. Forster?

A. That may have been Mr. Forster's. I did not take part in that in any way.

Q. That was the purpose of that meeting that you——

A. (Interposing) No, it was not.

Q. (Continuing) ——that you introduced Mr. Forster to Mr. Kachlein?

Well, why did you deliver to Mr. Kachlein the minute book of Finstad and Utgard?

A. Just because Mr. Forster wanted to hire Mr. Kachlein on one of his accounts.

Q. Just on one of his accounts?

A. That is right.

Q. All right; now, did you keep any notes, records, diary, or memorandum with reference to any of Mr. Forster's matters?

A. It is possible.

Q. All right; do you have one upon the time that you introduced him to George Kachlein?

A. No, I am quoting from remembrance only.

Mr. Moriarty: If your Honor please, I think there should be some limit on this cross examina-

(Testimony of L. Hicks Taylor.)

tion. It is an entirely collateral matter. [4491]

The Court: Well, there should be some limitation. I don't know if we have reached it yet.

Q. (By Mr. Griffin): Now, Mr. Taylor, having entered your plea of guilty and before your sentence even, the matter of your civil liability came up between you and the Agents and with Mr. Kachlein, did it not?

Mr. Moriarty: Objected to as not proper cross examination.

The Court: Objection overruled.

A. That is the natural process of all of these cases.

Q. (By Mr. Griffin): And that occurred?

A. Yes.

Q. And that is the matter that Mr. Kachlein filed the protest, or appeal—whatever you may call them—on the civil side for you?

A. He filed the protest, yes.

Q. And to do that he had to have what is called in the Department a special power of attorney for that purpose? A. That he had.

Q. So that he had that special power of attorney from you to represent you in the matter of [4492] your income taxes due and unpaid?

A. He had that.

Q. You and your wife's?

A. He had that power of attorney until October 27, 1950.

Q. Yes, sir; and on April 4th, on or about April 4, 1950, you received a notice from the State Board

(Testimony of L. Hicks Taylor.)

of Accountancy that your license had been suspended by the State of Washington, didn't you?

A. Mr. Kachlein may have received it; I didn't.

Q. Well, that is a fact, isn't it?

A. That I don't remember.

Q. You don't remember?

A. It would be the natural process, so that we might as well say it happened.

Q. Well, you were suspended, were you not?

A. I agreed to be suspended with the Board.

Q. And Mr. Kachlein worked out with the Board an understanding in your behalf, did he not?

A. I don't know what Mr.——

Q. Now just a moment until I complete the question to see if you do.

An understanding, did he not, that the Board would take no action for disbarment while you [4493] were incarcerated in the Penitentiary but would give you a hearing where you could appear personally after you got out?

You know that, don't you?

A. Mr. Kachlein may have done that, but in 1950 I received my license again and paid for it and appeared before the Board and asked them what their decision was and they felt that I should surrender that until further application and I surrender my license to the Board in 1950, after I returned from the Island.

Q. But I am dealing with Mr. Kachlein.

A. I didn't say he didn't do something; he probably did.

(Testimony of L. Hicks Taylor.)

Q. Now, in the meantime, or at about the same time, your brother Jack Taylor suggested or wanted to begin the circulation of a petition to help you from disbarment, didn't he?

Mr. Moriarty: Objected to as irrelevant; not proper cross examination.

The Court: Is this covered?

Mr. Griffin: That is the very thing they went into.

Mr. LeSourd: I tried to and your Honor excluded the letters until later on. [4494]

The Court: I will sustain objection at this time.

Mr. Griffin: Sir?

The Court: This matter may be gone into on further direct examination?

Mr. LeSourd: It is going to be gone into, yes, sir, and I have no objection to Counsel's asking this witness about it.

The Court: You have no objection?

Mr. LeSourd: No, I have no objection.

The Court: All right, you may proceed. The Court will overrule the Government's objection.

Q. (By Mr. Griffin continuing): Do you have the question in mind, Mr. Taylor?

A. Yes.

The Court: Do you have it in mind?

The Witness: Yes.

Q. (By Mr. Griffin): Your brother was preparing to, or commenced, I don't know which, the circulation of a petition to—the effect of which would be to try to keep you your license, wasn't it?

A. Yes.

(Testimony of L. Hicks Taylor.)

Q. Mr. Kachlein objected to that, didn't he, [4495] the circulation of that petition?

A. Mr. Kachlein, yes, he requested——

Q. He felt that that would be in violation with the agreement he had made with the Department for you that no action would be taken so that you could have a hearing and testify personally when you got out?

Mr. LeSourd: I will object to asking the witness to state Mr. Kachlein's feeling.

Q. (By Mr. Griffin): That is what Mr. Kachlein advised you, wasn't it? A. No, he did not.

Q. Did he tell you why he did not want that petition? A. I was informated——

Q. (Interposing): By Mr. Kachlein? I am not asking about what you were informed by anybody else.

What did Mr. Kachlein inform you in that particular?

A. I heard from Mr. Kachlein—from the 24th of April until the 13th of September, except for papers sent over and in a very simple matter, I never had words with Mr. Kachlein. [4496]

Q. Now, again, the date of your sentence was April 25, 1950, wasn't it?

A. Right on the minute.

Q. Before sentence on that date and on April 18th Mr. Kachlein conferred with you for approximately one hour over what statement should be made to the Court in seeking leniency and assisting

(Testimony of L. Hicks Taylor.)

or advising the Court in the matter of sentence or argument against it, did he not?

A. I do not have too clear a recollection of it but I presume it happened.

Q. And I think you said that Mr. Kachlein prepared a will for you before you went over?

A. That was before I went away, yes.

Q. And a codicil after you were over there?

A. Yes.

Q. And the day preceding the sentence Mr. Kachlein conferred with you again, did he not?

A. Yes. I think he told me to be ready in the morning and to have ten dollars in my pocket the next morning to go to Tacoma.

Q. He advised you that upon the entry of your plea you would not be coming back to Seattle but would go directly to McNeil?

A. He didn't so advise me. [4497]

Q. What was the $10.00 for?

A. You usually like to have that when you are over there.

Q. As of April 25, 1950, the date of your sentence, up to that time had any Government Agents to your knowledge made any call upon Mr. Forster?

A. Mr. Forster had a note, or on a card, written on the 21st of April that Mr. Marx had called him and wanted a financial statement.

Q. On April 21st? A. That is right.

Q. That is the day you went to Conway, isn't it?

A. That is correct.

Q. Well, then, you did discuss, did you not, with

(Testimony of L. Hicks Taylor.)

Mr. Forster the matter of his books and records on that Conway trip? A. Yes.

Q. And Mr. Forster again asked you if his records were in order, didn't he?

A. And I said they were and that he had to make a financial statement and I suggested two or three accountants, among them Mr. Alkire, and to take the statement that I had prepared for the book for some time in April and to give this with his [4498] personal assets and submit this statement to Mr. Marx.

Q. And on this trip to Tacoma with Mr. Kachlein you discussed with him the fact of the then pending Forster investigation, didn't you?

A. In what way?

Q. I asked you if you discussed it with him?

A. I have no distinct recollection of the discussion.

Q. You discussed with Mr. Kachlein the advisability of employing accountants for Mr. Forster, didn't you, on that trip?

A. On our way to Tacoma?

Q. Yes.

A. The day I was sentenced I mentioned the same thing to Mr. Kachlein—to take the financial statement that I had prepared for the Peoples Bank and to get Mr. Forster's personal assets included with that and submit it to Mr. Marx. I also suggested to Mr. Kachlein that I thought Mr. Marx might wait, and wait until I came out as he had practically guaranteed I would get five to seven

(Testimony of L. Hicks Taylor.)

months, and he informed me that Mr. Marx would not work with me.

Q. You had no objection to working with Mr. [4499] Marx, did you? A. I had none, no.

Q. On this trip to Conway, April 21, 1950, you advised Mr. Forster that you were carrying a gun and were going to get Mr. Marx, didn't you?

A. That is an absolute false statement.

Q. This is the trip in which both Mr. Erickson and——

A. (Interposing) And I am saying that is an absolute false statement.

Q. You and Mr. Marx were friendly, were you?

A. We were never enemies in any way.

Q. Now, on this trip to Tacoma with Mr. Kachlein, Mr. Kachlein suggested, did he not, that he thought it would be necessary to get an accountant for Mr. Forster, as I understand you say, because he said Marx wouldn't wait and wouldn't work with you? A. That is correct.

Q. And who made the recommendation as to names of accountants?

A. I did some recommending. I recommended Mr. Alkire, the principal reason being that he had been with the Department and would be familiar with what Mr. Marx wanted and I thought that would [4500] be a good place and we talked over others. I don't remember who.

Q. Do you remember you talked over Haskin and Sells, and Price Waterhouse?

A. It is possible.

(Testimony of L. Hicks Taylor.)

Q. Mr. Alkire was a member of the firm of Touche, Niven, Bailey and Smart, was he not?

A. That is right.

Q. And that is the firm that was employed?

A. Mr. Kachlein I believe hired them.

Q. Yes, sir; on this trip to Tacoma you told Mr. Kachlein you had taken all the books and records, all the working papers, of the various Forster enterprises and left them out at Issaquah, didn't you? A. Yes.

Q. You told him that some of the minute books might still be in Mr. Jones' office, or Mr. Grill's office? A. I do not recollect that.

Q. On what date did you take these books and records out to Issaquah?

A. To the best of my recollection all the books and records and files were taken, with the exception of Finstad and Utgard current books, on the [4501] 11th of April, if I remember correctly.

Q. Have you any way—any data or anything to refresh your recollection as to when you took them out? A. No, nothing definite.

Q. And you took them out because you knew that you wouldn't be able to carry on your—the work you had been doing, didn't you?

A. Not necessarily. There was no intimation but what I would continue on when I returned.

Q. Well, I am speaking of while you were away, sir.

A. That is right, and I placed them there in such a shape that anyone with any degree of knowl-

(Testimony of L. Hicks Taylor.)

edge could have gone into those files and taken them out and followed them through very nicely.

Q. And you placed them there so that anyone could have access to them to obtain necessary information, including the Revenue Agents, didn't you?

A. I informed Mr. Forster that I thought it would be very wise to get in touch with me before anybody went through them, but they were in shape.

Q. Why would it be wise, why did you inform him it would be wise, to get in touch with you before anybody went through them? [4502]

A. Because I could outline to him what would apply to each particular enterprise there.

Q. You left the books and records there, however, and one of your reasons was so that the Revenue Agents would have access to them.

A. That was possibly part of it and part of it that Mr. Forster did not want his files where somebody else could be pawing through them and in a discussion we thought it was smart to move them all down there.

Q. So you had a discussion with Mr. Forster as to moving them?

A. Sure I did, I discussed with him.

Q. When did you do that?

A. Well, it could have been two or three times.

Q. When was it, if ever?

A. Between the first day of January and the 25th day of April. It could have been four or five times in that period.

(Testimony of L. Hicks Taylor.)

Mr. Griffin: It is recess time, if the Court please.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-day recess. The [4503] Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion.

You may now be excused until 1:45.

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 12:16 o'clock, p.m., April 22, 1954, a recess was had until 1.45 o'clock p.m., at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Taylor, on April 25, 1950, at the time that you were sentenced in Tacoma you made a statement to the Court in open court, didn't you? [4504]

A. That is my recollection that I did, yes.

Q. You said this, did you not:

"I was too much interested in clients' affairs to really think of my own welfare."

(Testimony of L. Hicks Taylor.)

A. I believe that is true.

Q. And that was true, wasn't it? A. Yes.

Q. And among those clients were Mr. Forster and his interests, weren't there? A. Yes.

Q. And you said:

"I was very negligent in keeping my own records."

That was true, wasn't it? A. Yes.

Q. Now, you stated, I believe, that Mr. Kachlein, while you were at McNeil Island, prepared a protest or appeal to the Internal Revenue Service, proper department, I think you said in a lackadaisical manner. Is that the term you used?

A. It was not a very complete protest, no.

Q. It was what is known in the practice as a skeleton protest, was it not?

A. Well, extremely so, yes.

Q. You were, of course, not in Seattle? [4505]

A. No.

Q. And you couldn't prepare it and you didn't have access to your own records to prepare it, did you? A. No.

Q. You didn't have any of your own records upon which Mr. Kachlein could rely in preparing it, did you?

A. I had prepared a proposed amended tax return for all the years involved and they were available.

Q. Yes, but I said from your own records.

A. I am speaking of my own records. They were prepared from my own records.

(Testimony of L. Hicks Taylor.)

Q. And eliminating these amended tax returns that you wanted to file, but from the records that you kept, Mr. Kachlein had nothing upon which he could rely, did he?

A. The amended tax returns were taken from records that I had assembled after this started and they were very much in line with my final settlement that I made when I returned.

Q. I said, eliminating these amended tax returns which were not filed and prepared by you, Mr. Kachlein—you had no records, original [4506] records, upon which Mr. Kachlein could rely in making a formal protest, did you?

A. I had complete work sheets for the various years showing my income which we used in the final settlement in what I am trying to tell you; that those were prepared at that time.

Q. Mr. Kachlein arranged with the Internal Revenue Department, as you knew, to file a skeleton return to protect the record until you could be out and confer with him and go over these records, didn't he?

A. Yes, I will give him credit for that, yes.

Q. So that when you referred to the kind of return that was filed, it was a return filed with your knowledge that the arrangements made with the Department were for your protection until you could get out, wasn't it?

A. I do not believe in this type of a case that it is necessary to file a protest when you are serving time. A protest can be filed after you return.

(Testimony of L. Hicks Taylor.)

Q. I understand then that you did not think it was necessary to file a protest?

A. I don't believe it is obligatory.

Q. Then in—when did you return to Seattle from McNeil Island? [4507]

A. On the 10th day of September, 1950.

Q. You had planned upon returning or being released, rather, to take a vacation, a short vacation, hadn't you?

A. That was the plan we contemplated, yes.

Q. You and Mrs. Taylor? A. Yes.

Q. Now, you were interviewed, as I understand, by Mr. Eppler and also Mr. Marx, just prior to your release? A. On September 6, yes.

Q. September 6th; there was no intimation at that time by either Mr. Marx or Mr. Eppler that you were personally involved in Mr. Forster's income tax matter, was there?

A. To the best of my recollection they didn't make any threats, of any kind that I was involved.

Q. I am not speaking of threats. There was no suggestion that you were involved, was there?

A. I really do not remember that they made any statement of that kind.

Q. Now, at the time that you left Tacoma for McNeil Island there had been no audit started of the books of the Forster enterprises, had there?

A. Not that I know of. [4508]

Q. During the time that you were at McNeil Island this firm that you recommended audited at

(Testimony of L. Hicks Taylor.)

least in part these books and records of the Forster enterprises, didn't they?

A. Well, the statements will show in the record here that they did.

Q. And they wrote you a letter to be received by you upon your release suggesting that you come in and confer with them as to their report, didn't they?

A. They as a firm wrote to me but Mr. Forster had no connection with that letter.

Q. You ignored their request, didn't you?

A. I ignored it on the strength of Mr. Kachlein's telling me not to confer with the Revenue Agents.

Q. Touche, Niven firm were not Revenue Agents, were they?

A. No, and I wasn't working and had no connection with Touche, Niven.

Q. So it was just at about the time that you were released from McNeil Island that the preliminary audit of this firm was ready for delivery to whoever was entitled thereto, was it?

A. I don't know. [4509]

Q. You contacted Mr. Kachlein after your release on Wednesday, September 13th, did you not, in 1950? A. Yes.

Q. You were then planning to go on your vacation that you had planned on?

A. Yes, we were urged very much to get away.

Q. Mr. Kachlein told you that he thought in the frame of mind that you were in and what you had

(Testimony of L. Hicks Taylor.)

gone through it would be advisable for you to take that vacation and rest, didn't he?

A. And urged me to get out of town as quickly as possible.

Q. Urged——

Mr. LeSourd: Let him answer.

A. (Continuing) Urged me to get out of town as quick as possible.

Q. (By Mr. Griffin): He said to you to get out of town as quickly as possible?

A. That is right.

Q. He told you that when you got back he would want to go into the matter with you in some detail, didn't he? [4510]

A. No, I have no remembrance of it.

Q. He told you that undoubtedly your assistance would be required in the necessary explanations of your method of handling the Forster affairs, didn't he? A. He made no such statement to me.

Q. That in the situation as disclosed by the investigation Mr. Forster was in serious tax trouble; he told you that, didn't he? A. He did not.

Q. And he told you that Mr. Forster would need your help? A. He did not.

Q. And you said to him, "Well," in substance, "then he will have to pay well for it"?

A. That is an absolute falsehood.

Q. All right; you went upon your vacation, didn't you? A. Yes, we did.

Q. And you returned in October?

A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. Now, when you returned in October you had a conference, or, rather, Mr. Kachlein called you into his office, didn't he?

A. I believe I 'phoned him first. [4511]

Q. Anyway, you had a conference on October 27th? A. Yes.

Q. The conference actually in which Mr. LeSourd later was joined occupied about three hours, didn't it?

A. I would say an hour and a half at the most.

Q. As of the date of that conference there had been no statement made to you by anyone that you personally were involved in the fraud claim of the Government so far as Mr. Forster's enterprises were concerned?

A. My first definite knowledge that I was involved in it, that was the, I believe the 14th day of March, 1951.

Q. Fourteenth day of March, 1951, and we are now dealing with October 27, 1950, is that correct, this conference?

A. What now; what is that?

Q. We are talking now about October 27th.

A. There was no discussion of my involvement in it at that time.

Q. But there was a discussion, and an extended discussion, of the Hans Forster situation?

A. There was not. [4512]

Q. Of the books and of the records?

A. There was not.

Q. And in which Mr. Kachlein told you, in sub-

(Testimony of L. Hicks Taylor.)

stance, what the accountants had found in going over your records and what you say are your work sheets?

A. He did not; he never mentioned the Forster case at that meeting.

Q. That was the meeting, Mr. Taylor, was it not, in which eventually I reach the point where you were advised he was going to have to decide as between two clients and get out——

A. It didn't take him long to decide that. We discussed my affairs only at that meeting. Mr. Forster's affairs were not discussed at that meeting.

Q. Mr. Kachlein also discussed with you as to why you had not recorded on the books the funds that Mr. Forster was using out of account 198, didn't he?

A. Mr. Kachlein never mentioned the Forster affairs in one word or a dozen during that conference.

Q. He advised you—— A. He did not.

Q. ——at that conference that the accountants had [4513] found the situation existing testified to here in the year-end statement, December 31, 1949, didn't he? A. That is an absolute falsehood.

Q. Nothing was discussed about Mr. Forster?

A. Absolutely not, not one word. My affairs were the only ones discussed at that conference, my own personal income tax returns were discussed and we hired another attorney.

Q. Why was there any need for a decision on that particular time then in the employment of Mr.

(Testimony of L. Hicks Taylor.)

LeSourd if the affairs of Hans Forster were not discussed with you?

A. The affairs of Hans Forster were kept a secret from me continuously until I was—I received a letter from the Internal Revenue Department sometime early in 1950—late 1950 or early 1951.

Q. My question is: What occurred at that meeting to require Mr. Kachlein to make a decision as to representing you or Mr. Forster if Mr. Forster's affairs were not discussed at that meeting?

A. There was discussed: He withdrew from me, we picked our attorney, and had a conference with the attorney, and that ended my discussion with Mr. Kachlein on my own affairs, not the affairs of Mr. Forster. [4514]

Q. Mr. Taylor, at this meeting that you referred to, and you say it lasted an hour and a half, even less than that, I suggested three hours, I will ask you if Mr. Kachlein, before Mr. LeSourd was called, did not discuss with you the affairs of Mr. Forster in detail as found by the accountants?

A. He did not.

Q. Why was there any discussion with you at all then about your own affairs if Mr. Kachlein was withdrawing from the case?

A. We were examining the telephone book to determine who I should hire to take his place.

Q. My question was: Why was there any discussion about your affairs if Mr. Kachlein was withdrawing from the case?

A. There was discussion of my case and who I

(Testimony of L. Hicks Taylor.)

should employ as an attorney and that was all the discussion was about. Mr. Forster's name did not come into that discussion.

Q. I think you have testified, Mr. Taylor, that at that meeting Mr. Kachlein said that he could continue to represent Mr. Forster, or he could continue to represent you, did you not, but not both of you? [4515]

A. That was the purpose of the meeting.

Q. And yet you say Mr. Forster's affairs were not discussed, and that was the purpose of the meeting?

A. I said the purpose of the meeting was to determine whether he was withdrawing from me or withdrawing from Mr. Forster and he withdrew from me.

Q. What had occurred prior thereto between you and Mr. Kachlein that brought up the matter of Mr. Kachlein's withdrawing from either?

A. Mr. Kachlein's own suggestion.

Q. And you had been away on your vacation and returned, this was the first time you saw Mr. Kachlein after your vacation, wasn't it?

A. I 'phoned Mr. Kachlein the night before.

Q. And made an appointment?

A. That is right.

Q. And that is all?

A. That is correct, only he said he must make a decision. That night he told me he had to make a decision.

Q. That night when you 'phoned him?

(Testimony of L. Hicks Taylor.)

A. You bet you.

Q. Make a decision about what? [4516]

A. Whether he would retain me or Mr. Forster; there was conflict, he said.

Q. He told you that on the 'phone that night?

A. He told me that on the 'phone that night.

Q. So that you went down to his office the next morning.

A. To settle that particular point and that only.

Q. And Mr. Forster's matters were not discussed? A. No, sir.

Q. And that was the reason you were being called?

A. They were not discussed at all at that meeting.

Q. Although that was the purpose of the meeting?

A. To determine his position as to whether he would represent me or not, and I had determined that he would not.

Q. You determined that before you went down?

A. I determined that.

Q. Before you went down? A. Yes.

Q. Why did you have any discussion for an hour and a half then that morning? [4517]

A. He had records of mine. He had many records of mine.

Q. Mr. Taylor, you went down in the morning of October 27, 1950, and Mr. Kachlein said to you finally, or explained to you, that Mr.—that he was

(Testimony of L. Hicks Taylor.)

—found himself in the position that sometimes happens with lawyers, didn't he?

A. That is correct.

Q. He said that he was representing you in your civil tax matter and you had brought Mr. Forster to him and he was representing him in this matter then pending; he said that, didn't he?

A. In similar words, yes.

Q. I mean in substance, I do not mean the exact words. He said that it was becoming apparent that there might be a conflict between your interests and that of Mr. Forster, didn't he?

A. That is possible that he did.

Q. He said that you were the first client and that he could represent you. If he did he could not represent Mr. Forster because this conflict might arise. Or, he could represent Mr. Forster and not represent you. Or, number three, he could withdraw from representation of both of you entirely.

A. That is correct. Now you are speaking of what [4518] happened that morning.

Q. That is at the conclusion of that morning?

A. That was the beginning of that morning.

Q. He told you—you discussed with him what the Forster situation was and what had occurred in the Forster investigation during your absence, didn't he? A. He did not.

Q. Mr. Taylor, only four or five days before you left McNeil Island Mr. Marx and Mr. Eppler had told you that their investigation disclosed at

(Testimony of L. Hicks Taylor.)

least one million dollars of undisclosed income, didn't they?

A. Now, that is getting some truth in it; that is the truth.

Q. And you said you were shocked, didn't you?

A. Yes, I was.

Q. And yet in this conference with Mr. Kachlein if you had been you didn't discuss with him the Forster situation at all?

A. I did not. He did not mention it.

Q. You discussed then whether it would be better for Mr. Forster, or for Mr. Kachlein——

Mr. Griffin: Strike that. [4519]

Q. (By Mr. Griffin continuing): You told Mr. Kachlein that you didn't want him to withdraw but felt he was compelled to withdraw from this matter, didn't you?

A. I was probably a little diplomatic about it, yes.

Q. You suggested to him that inasmuch as he was familiar with the then Forster situation as developed by the accountants and his interviews with the Revenue Agents that if he could find a good lawyer, a good tax lawyer, for you you would suggest that he continue to represent Mr. Forster and get you another lawyer, didn't you?

A. Yes; only I want to explain.

Q. Go ahead.

A. That Mr. Kachlein did not make any discussion of it. The discussion was this: As long as you

(Testimony of L. Hicks Taylor.)

want to withdraw from my case we will try and select a tax lawyer.

Q. Who said that?

A. I think I probably said part of it and Mr. Kachlein the other.

Q. It was perfectly agreeable to you on October 27, 1950, that Mr. Kachlein cease representing you and give his sole representation to your friend, Mr. Forster, wasn't it? [4520]

A. That was understood.

Q. Then there was a discussion as to who you should employ?

A. Yes. We pawed through the telephone book for one-half or three-quarters of an hour looking at the different tax lawyers' names.

Q. Are there any lawyers listed in the telephone book as tax lawyers?

A. That is why we took so much time, we had to read them over. He knew the lawyers.

Q. My question is: Are there any lawyers listed in the Seattle telephone directory as tax lawyers?

A. Not to my knowledge.

Q. No; so, Mr. Kachlein suggested two firms of lawyers experienced in tax work, didn't he?

A. I would say more than that.

Q. He suggested first Mr. Jones of Jones and Bronson, didn't he?

A. I knew of Mr. Jones. He might have.

Q. And you said that you did not think under the circumstances that you would want to employ Mr. Jones because you had at one time had Mr.

(Testimony of L. Hicks Taylor.)

Jones represent Mr. Forster and there might be a conflict there? [4521]

A. I have no remembrance of that discussion but it is possible.

Q. Did he discuss with you then any other lawyer than Mr. LeSourd sitting now across from me at this bar?

A. I remember of two or three other names. I believe there was a Mr.—I can't think of his name. He has a crippled foot.

Q. Paul Coles?

A. Paul Coles. Evich, or somebody like that.

Q. Evich?

A. It seems to me that that name was mentioned and discussed. There were two or three others. I don't remember now who they were.

Q. And you finally got down to Mr. LeSourd, is that right?

A. Yes. Mr. LeSourd had been indirectly recommended to me before.

Q. Even before you employed Mr. Kachlein, had he not? A. No.

Q. Did you know Mr. LeSourd?

A. I had never met Mr. LeSourd until that morning. [4522]

Q. Mr. Kachlein explained to you that Mr. LeSourd had been in the Government service in the Department of Justice, did he not?

A. It is possible he did. I have forgotten that.

Q. Assigned to the Internal Revenue Agency?

A. I am not positive that that was mentioned.

(Testimony of L. Hicks Taylor.)

Q. And that he was quite familiar with the practice and an expert in the field?

A. I rather doubt that conversation.

Q. What conversation—you discussed several lawyers, you say? A. That is right.

Q. You settled on Mr. LeSourd?

A. I doubt if any great detail of that kind was brought into it.

Q. What did Mr. Kachlein tell you about Mr. LeSourd?

Mr. Moriarty: Objected to as immaterial, if your Honor please.

The Court: Objection sustained.

Q. (By Mr. Griffin): You settled on Mr. LeSourd if he would accept the employment?

Mr. Moriarty: Objection. The [4523] Government did not introduce this and it is extending so long into immaterial matter.

The Court: I think it is clear Mr. LeSourd was selected. The Court will sustain the objection.

Mr. Griffin: I am only interested in the establishment of the selection at the suggestion of Mr. Kachlein and not an independent appointment.

Q. (By Mr. Griffin): So, Mr. Kachlein called Mr. LeSourd on the telephone to see if he would represent you, didn't he?

A. At my request, yes.

Q. And Mr. LeSourd came to Mr. Kachlein's office on October 27, 1950?

Mr. Moriarty: Objected to as immaterial.

The Court: Objection overruled.

(Testimony of L. Hicks Taylor.)

A. Yes, he came there.

Q. (By Mr. Griffin): And Mr. Kachlein introduced you to Mr. LeSourd? A. Yes.

Q. And Mr. Kachlein explained in detail in your presence to Mr. LeSourd why he found it [4524] necessary to withdraw from representing you, did he not?

Mr. Moriarty: Objected to as immaterial and not proper cross examination.

The Court: Objection overruled.

A. He did explain that it became a dual representation and that he should withdraw. I don't remember that he mentioned any detail.

Q. (By Mr. Griffin): There was no intimation made at that time by anyone that you were likely to be indicted in connection with the Forster investigation, was there?

A. There absolutely was not.

Q. Each—you at that time, Mr. Forster at that time—were dealing with, simply, an investigation being made by the Internal Revenue Service?

A. I knew an investigation was going on, yes.

Q. No—to your knowledge no—statement was made of any likelihood of a criminal indictment against Mr. Forster, was there?

A. I had not heard of it, no.

Q. Mr. LeSourd accepted the employment then for you? A. As my attorney, yes.

(Testimony of L. Hicks Taylor.)

Q. That ceased any connection between you and Mr. Kachlein on October 27, 1950, didn't it?

A. That is correct. [4525]

Mr. Griffin: And that is all.

Cross Examination

Q. (By Mr. Keesling): Mr. Taylor, this morning you made the mention as to the ledgers at the time they were turned over that you turned them over to Mr. Erickson. You were referring, were you not, to the time you took them out to Issaquah Creamery in the car? I think you used the phrase you turned them over to Erickson?

A. Yes, but the current ledgers were turned over separate from the files that I took. The current ledgers were turned over separately.

Q. I see; and then you also used the phrase that Mr. Erickson followed through with the ledger. To your knowledge, and from your examination of the ledger here in evidence, at no time did Mr. Erickson make any entries or work with your ledgers to your knowledge?

A. Well, Mr. Keesling, that is hard to answer. I don't believe I have seen any of the 1950 ledger. Whether he posted or not, I wouldn't know.

Q. To your knowledge, you don't know whether Mr. Erickson did any work as far as the ledgers are concerned?

A. No, I have no knowledge of it.

Q. Now, in respect to your work, you had [4526] the exclusive duty, did you not, of computing the

(Testimony of L. Hicks Taylor.)

income tax for Issaquah Creamery, Hans Forster, and Mrs. Forster, his wife, for the years 1945 through 1949? A. Yes, I prepared them.

Q. And you had the exclusive duty, did you not, of preparing the income tax returns for Issaquah Creamery, Hans Forster, and Mrs. Forster, for the same years? A. Yes.

Q. And you also had the exclusive duty, did you not, of filing with the Government the tax returns as I have referred to?

A. Yes, and no, in this respect, Mr. Keesling: many times they were signed in my office, and mailed from there, and I think there were times that they were either given to Mr. Forster or in some way taken to Issaquah and mailed from there; but as a whole, they were mailed from my office, I believe.

Q. My questions on all three previous questions are this:

It was your exclusive duty, was it not, to compute the income tax, to prepare the income tax returns, and to file it? A. Yes.

Q. That is for these Indictment years, 1945 through 1949? [4527] A. Yes.

Q. Now, Mr. Griffin offered in evidence—before I go into that, referring to Exhibit 258, this chart of accounts, would you refer to account numbers 32 and 33? Is it correct that accounts 32 and 33 are business account numbers? You might read what they are for.

(Testimony of L. Hicks Taylor.)

The tax accounts. There is a group of them, right there.

A. I am looking at Plaintiff's Exhibit 258, which is a schedule of accounts, headed "Issaquah Creamery Company, Incorporated," and it has a heading, "Issaquah" here, "Alpine" there, and the accounts are numbered from 1 to 40, for Issaquah Creamery, and for Alpine they are numbered A-1 to 40, and account No. 31 is "Unemployment Tax"; 32 is "Excise Tax"; 33 is "Other Taxes," and they are on both sides the same.

Q. They are the same numbers and same accounts? A. Yes, that is correct.

Q. And is it true that 32 and 33 are business accounts? A. That is correct.

Q. They have no reference to a drawing account? A. No.

Q. 32 is the item "Excise Tax," is that [4528] correct? A. That is correct.

Q. And 33 is "Other Taxes"?

A. That is correct.

Q. Now, referring to Exhibit A-104, an Alpine Dairy balance sheet of December 31, 1948, there is an item at the bottom there which refers to deduction withdrawals. That account, is it not, is a reference to a drawing account?

A. It is Hans Forster withdrawals, and it is a ledger account.

Q. Yes.

That would be what you would call a drawing account? A. Correct.

(Testimony of L. Hicks Taylor.)

Q. And you testified that that could be traced right into the ledger, and from the ledger right into the journal?

A. It is my recollection that it could be.

Q. Now, I show you Exhibit 272 in evidence, Plaintiff's Exhibit—I put a mark in there—do you find in your ledger account,—this drawing account?

A. Yes.

Q. And would you explain for the record just how it was set up?

It is a half page account, to the top of the [4529] page.

A. The top of the page is marked "Capital Invested."

Q. And that is Alpine, at the full top of the page? A. Alpine ledger is more than that.

Q. And then, towards the center of the page, you have put in a separate account?

A. I have typed in "Hans Forster Withdrawals."

Q. And in that withdrawal account are what entries?

A. As of March 31st, income tax, $10,784.42; May 31st, Walter Clark, $10,000; October 31st, income tax, $14,000. On the credit side, Walter Clark, $10,000, leaving a balance in the account of $24,784.42, this account right under my left hand, (indicating).

Q. Now, Mr. Taylor, will you explain to the Jury why income tax payments go into a drawing account?

(Testimony of L. Hicks Taylor.)

A. It is paid on his personal obligation into the Treasury Department.

Q. An income tax payment is a personal expense, isn't it? A. That is correct.

Q. Just like his grocery bill; it is not [4530] deductible from any business of any personal account, so far as income tax purposes?

A. Yes.

Q. Now, you testified those figures could be traced right into the journals. I have placed the journals there, and for your easy reference, I have the page and line numbers showing the entries. Your first entry in your ledger, I believe, is March, 1948—March of 1948, is that right?

A. That is correct.

Q. I have under Alpine the 1948 one is the next one. A. The top one, or the bottom one?

Q. The years are marked on the ends here.

A. I am sorry; I didn't notice that.

Q. Would you refer to the exhibit number, Mr. Taylor?

A. I am looking at Plaintiff's 264 which is the journal of the Alpine Dairy.

Q. Would you look for March of 1948 on page 4 of the Alpine section, at lines 12 and 13?

You find those income tax entries there, do you not? A. Yes, there are two items.

Q. Those are the two items that were [4531] entered in your ledger and you combined them in a figure? A. Yes, I have a total.

Q. Now, would you tell the Jury what account

(Testimony of L. Hicks Taylor.)

Mr. Erickson—what account number he placed besides those income tax payments?

A. Account 33.

Q. And that is Account 33 which on the chart refers to other taxes, do you recall?

A. That is correct.

Q. Now, the other income tax item in your ledger, I believe, is for Alpine, October, 1948.

Would you look in the Alpine section for October, 1948, at page 1, line 12, I believe.

A. I have it, yes.

Q. And what is the amount entered there?

A. $14,000.

Q. That is the same amount as appears in your ledger? A. That is correct.

Q. Then, as Mr. Erickson has entered it, how did he make that check payable?

A. To the Collector of Internal Revenue.

Q. And those others were also made out that way, to the Collector of Internal Revenue?

A. That is right. [4532]

Q. And what, if any, account number did he put besides that account?

Some, I think, 32 and some 33?

A. This one is registered as account 32.

Q. And account 32 on the chart has excise tax, does it not? A. Yes.

Mr. Keesling: Would you mark this?

The Clerk: Defendants' Exhibit A-124 marked for identification.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit No. A-124 marked for identification.)

Q. (By Mr. Keesling): I show you what has been marked for identification, what purports to be an adding machine tape for Alpine, headed "Miscellaneous." Would you identify that, if you can?

Do you want that page and line number?

A. This appears to be an analysis of the miscellaneous column of the Alpine Dairy Journal account made on an adding machine tape.

Q. I might ask you in reference to the income tax figure, I think he has marked on there 33, also, the same figure that appears in your ledger?

A. Right here on this tape. [4533]

Mr. LeSourd: Just a moment, your Honor. I think this ought to be put into evidence.

Mr. Keesling: Yes, I intend to offer it.

The Court: You want to offer it?

Mr. Keesling: Yes, but I want further identification.

Mr. LeSourd: This, you say,——

Mr. Keesling: (Interposing) Will you mark these?

The Clerk: As one exhibit?

Mr. Keesling: Yes.

The Clerk: Defendants' Exhibit A-125 marked for identification.

(Defendants' Exhibit A-125 marked for identification.)

Mr. LeSourd: We have no objection to A-124, your Honor.

(Testimony of L. Hicks Taylor.)

The Court: Any objection from other counsel?

Mr. Griffin: No, your Honor.

The Court: Mr. Moriarty, any objection?

Mr. Moriarty: No, your Honor.

The Court: A-124 may be admitted.

(Defendants' Exhibit A-124 admitted in evidence.) [4534]

Q. (By Mr. Keesling): Showing you Exhibit A-124, the adding machine tape for March, 1948, is it correct that that is the manner in which the information was transmitted to you as to your entry in the ledger showing the income tax paid?

A. Yes, that is correct.

Q. Now, I show you what has been marked for identification as Defendants' Exhibit A-125. Would you identify that? I have reference to the same items and the same type of thing.

I might say, could you just identify it and then we will go through that particular item. They are adding machine tapes, are they not?

A. Yes.

Q. And there are four of them, is that right?

A. There appears to be five.

Q. Five adding machine tapes, and would you indicate what company and what date appears on them, just for identification?

A. They are marked "Miscellaneous, Alpine."

Q. That is the first one?

A. Yes. May, June——

Q. Just a moment. May of what year?

A. 1946.

(Testimony of L. Hicks Taylor.)

Q. And the next one is "Miscellaneous, Alpine"; that [4535] is the second one? A. Yes.

Q. And that is what date? A. June, 1946.

Q. And the third one is Alpine, Miscellaneous?

A. September, 1946.

Q. And the next one is?

A. December, 1947.

Q. Is that Alpine, also?

A. Alpine; and the next one is Issaquah, March, 1949.

Q. Do you recognize those as the type of tape that you received this income tax information on?

A. Yes.

Mr. Keesling: I offer this in evidence.

(Whereupon, there was a brief pause.)

Q. (By Mr. Keesling): While they are examining that exhibit, there is an additional entry in your ledger under that drawing account, 1948, that you have before you. What is that entry? You mentioned three entries in your ledger under the Hans Forster drawing account.

A. It appears that there is an item of debit and credit of the same amount, marked Walter Clark, and the same date. I don't have any recollection of what it [4536] is at the present time.

Q. Would you take Mr. Erickson's journal for 1948 for Alpine, and see if you could locate that? I don't know what page. I know it is on line 7.

Mr. LeSourd: We have no objection to A-125.

Mr. Moriarty: We have no objection.

The Court: Exhibit A-125 may be admitted.

(Testimony of L. Hicks Taylor.)

(Defendants' Exhibit A-125 admitted in evidence.)

Q. (By Mr. Keesling continuing): I believe it is Clark's Restaurant? A. Yes.

Q. And on what page does it appear?

A. On page 5, Clark's Restaurants.

Q. That would be for May, 1948, in the Alpine section of the journal? A. That is correct.

Q. And on line 7 it shows Clark's Restaurant enterprises as the payee? A. Yes.

Q. And the amount is under what column?

A. The accounts receivable.

Q. And that account is what?

A. Ten thousand dollars. [4537]

Q. And that same amount appears in your ledger? A. That is correct.

Q. Now, showing you Defendants' Exhibit A-125, referring to the first of those five tapes, will you state to the jury what account number is opposite the income tax item? Would you give the date, too?

A. May, 1946.

Q. That is Alpine?

A. On Alpine, there is an item marked income tax, $300, and the number 33, following.

Q. That 33 is the other taxes account item that you referred to before?

A. Yes, I believe that is correct.

Q. I show you the chart again.

A. Yes.

Q. It is 258.

A. I will suggest I have it here.

(Testimony of L. Hicks Taylor.)

(Whereupon, document was handed the witness by Mr. Keesling.)

A. (Continuing) Thank you.

Q. I am referring only to 32 and 33. I think those were the only numbers he used.

Now, will you identify the second tax as to how Mr. Erickson put that down on the tape for you?

A. I am still referring to Defendants' Exhibit [4538] A-125.

Q. And there is the second——

A. (Interposing) Under the miscellaneous Alpine taxes, there is an item income tax, $5300, 32 marked. Account 32 is excise tax.

Q. And what month and year was that?

A. In June, 1946.

Q. On that June, 1946 one, he marked the account 32? A. Yes.

Q. And then on the third tape, how did he mark it on that, and what was the date on that?

A. The third date is dated September, 1946, and he has income tax, $2500, account No. 33 following it.

Q. And that one he charged to account 33; and the next one, how did he charge that?

A. He has income tax—wait—for December, 1947, he has income tax, $11,000, account 32.

Q. $11,000 to account 32; and the next tape, the date, and how he charged it on that?

A. The next tape is dated March, 1949, and is from the miscellaneous column of the Issaquah

(Testimony of L. Hicks Taylor.)

journal and he has income tax, $2,360.96 in account 33.

Q. Is there another one there, a last tape? What is the date on that, and how he has charged that income tax item?

A. I read you the last tape.

Q. Oh, that was the last one? A. Yes.

Q. Now, on this Exhibit, A-125, will you take the June, 1946, the second tape, and trace that into the Alpine journal kept by Mr. Erickson? I think it will be on page 1, page 3 at line 28.

A. Line——

Q. It might also refer to page 1, line 8. I think there is a combination of figures there shown on the tape. A. Line 8.

Q. Page one?

A. Page one, Collector of Internal Revenue, $300, charged to account 32.

Q. And then on the tape there is a $5300 figure?

A. Yes.

Q. And would that have reference—the first entry in the journal has 300, and does the figure for the same month on page 3, line 28——

A. (Interposing) Line 28 has an entry to the Collector of Internal Revenue for $5,000.

Q. That would make the total of $5300 shown on [4540] the tape? A. Yes.

Q. On that last entry, how did Mr. Erickson charge that; to what account number?

A. He has written income tax, $5300. He charged it to account 32.

(Testimony of L. Hicks Taylor.)

Q. He charged it to account 32?

A. Yes.

Q. That is the 1946—I am just taking one out of each year.

Now, will you turn to the tape for 1947. If there is more than one, just pick one and we will trace that into Mr. Erickson's journal.

Would you state what month the tape is and what company, please?

The Court: Is it agreeable to recess, Mr. Keesling, now?

Mr. Keesling: Yes, it is quite all right.

The Court: Then you can have the matter in mind, Mr. Taylor.

The Witness: All right.

The Court: Ladies and Gentlemen of the Jury: We will take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this [4541] occasion. You may now be excused.

(Whereupon, the jury retired from the court room.)

(Whereupon, at 2:46 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:01 o'clock p.m. April 22, 1954, at which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

(Testimony of L. Hicks Taylor.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Keesling.

Q. (By Mr. Keesling): Mr. Taylor, you have before you now the adding machine tape for December, 1947, Alpine? A. Yes.

Q. And you are tracing that into Mr. Erickson's journal for the income tax entry there. Would you state to the Jury, I think it is on page 4, line 29, what the [4542] entry there shows?

A. Payable to the Collector of Internal Revenue, $11,000, and it shows on the tape, income tax, $11,000.

Q. And what account number has Mr. Erickson charged it to on his books? A. 32.

Q. Account 32? A. Yes.

Q. And that is the Excise Tax account on the chart? A. Yes.

Q. Now, you have already traced into Exhibit A-124, which is a 1948 tax—into the 1948 ledger. I show you this one. This is the one that appears in your general ledger in the drawing account, is that correct? A. Yes; $10,784.42.

Q. Now, for the year 1949, would you take the tape—that is, on the Issaquah—and would you trace that into the 1949 Issaquah journal kept by Mr. Erickson?

(Testimony of L. Hicks Taylor.)

I think you will find that under March, 1949, at page 1, line 21.

A. Line 21, Collector of Internal Revenue, $2,360.96, marked income tax on the tape.

Q. And what account number on the tape?

A. 33.

Q. And does it show an account number there in the journal?

A. It does not. It just shows income tax.

Q. Now, in the year—incidentally, before you close that, would you show the jury the columns in Harold's journals the adding machine tapes were made on? The adding machine tapes refer, do they not, to the miscellaneous column, and the sundries column only?

I don't mean the particular tape, but the tapes in general? A. Yes, the tapes cover——

Q. (Interposing) Would you show? That is the first column under Sundries and the last column under Miscellaneous?

A. The sundries column, under my finger here, and the miscellaneous column is here (indicating).

Q. Now, the columns in his journal in between the first and the last entries, what are the headings of those columns?

A. Reading them straight across the page, you have Bank, Debit and Credit, Sundries, Debit and Credit, Accounts Receivable, Debit and Credit, Accounts Payable, Debit and Credit, Cash, Debit and Credit, Sales, credit, Miscellaneous, Debit, Alpine Clearing Account, Debit and [4544] Credit.

(Testimony of L. Hicks Taylor.)

Q. Now, it is only on the two columns of sundries and miscellaneous that Harold made adding machine tapes, is that right? I mean, that was the usual practice? A. Yes.

Q. But on the other columns you posted directly from his journal? A. The footings, yes.

Q. You didn't have tapes to post?

A. Yes, directly to a controlling account.

Q. As an example, on this same account that we were referring to, this drawing account, in your ledger—it is Exhibit 272—a drawing account for Alpine that has been referred to under 1948, the second entry, what is that second entry?

A. Well, that is a charge to Walter Clark.

Q. And you just now traced that into the accounts receivable of Mr. Erickson?

A. That is correct.

Q. And you post that to your ledger; you wouldn't post that account receivable from a tape, would you?

A. Well, unless that was in the sundries column.

Q. That is right, but it was, in fact, in the accounts receivable column; is that right? [4545]

A. Yes.

Q. So, you took it from his journal, did you, from his accounts receivable column, and then put it in your ledger from there; would that be an example of how the accounts receivable are posted?

A. At times, yes. It could be, and sometimes he made me a tape of them.

Q. But generally it was the practice to make

(Testimony of L. Hicks Taylor.)

the tapes only on sundries and on miscellaneous?

A. Yes. As a rule, there were not many entries in the accounts receivable column.

Q. Now, would you take the year 1945 and the Issaquah journal, and if you will, check page 1, line 14, for the income tax item there? It is line 14, page 1, of March, 1945. I have no tapes on that.

A. It is on line 14. Is that the one?

Q. Yes, on the Issaquah section, page one, line 14.

A. It is marked Collector of Internal Revenue, $6,721.42.

Q. And to what account did he charge that on his books?

A. He got it marked account 32.

Q. Now, will you turn to the Alpine section for the year 1945, and take January, 1945, on page 3, and [4546] line 16? A. Yes?

Q. What do you find there?

A. $5,713.44.

Q. And the amount paid to the Collector of Internal Revenue?

A. Yes, the amount paid to the Collector of Internal Revenue.

Q. And to what account number did he charge it? A. He has here 33.

Q. 33 is the "Other Taxes" on the chart?

A. That is correct.

Q. Now, will you turn to June, 1945, page 1, at line 9? Would you just read the entry there, please?

(Testimony of L. Hicks Taylor.)

A. He has got Collector of Internal Revenue, $5,000, marked "Income Tax".

Q. And is it charged to an account number?

A. No, he didn't put the number on that.

Q. There is no number on that. Now, will you turn to November of the same year, 1945, page 3, line 27?

Mr. Maxwell: Is this Alpine or Issaquah?

Mr. Keesling: This is Alpine.

A. Collector of Internal Revenue, $5,075.76, [4547] marked "Income Tax."

Q. (By Mr. Keesling): And what account number did you charge that to?

A. Account 33.

Q. Now, the next entry, December, 1945, would you look at page 3 for December, 1945?

A. What line?

Q. Line 24, page 3.

A. Collector of Internal Revenue, $291.52, account 33.

Q. Account 33? A. Yes.

Q. Now, in reference to the 1948 entries, your entry of setting up the drawing account in Exhibit 272 and the 1948 tape, do you have that up there? It is a separate one. A. Yes.

Q. In that year, you took the income tax payments from his miscellaneous column and he had charged those to account 33, that business account; that is right, isn't it?

A. Yes, he marked the income tax.

Q. Yes; then you set up a separate drawing ac-

(Testimony of L. Hicks Taylor.)

count and placed it where it should belong, is that right? [4548]

A. I moved it from the total of this miscellaneous and posted it to Hans Forster account, because it is not an expense item.

Q. As a matter of fact, on the tape itself,——

A. (Interposing) It is labelled.

Q. I refer to A-124, the 1948 account, it shows that you removed the total amount of that income tax from your business expense items, does it not?

A. That is correct.

Q. Now, throughout 1945, '6, '7, '8 and '9, from the tapes and the ledger before you, it is apparent, is it not, that throughout those years, Harold kept charging this personal expense item to a business account number; isn't that true?

A. In the miscellaneous column, yes.

Q. In the miscellaneous column; as a matter of fact, if in that 1948 entry, you hadn't pulled it out and removed it from business expense, it would have been another item that he had charged as business expense when in reality it was a personal expense; isn't that right? A. That could be true.

Q. And if all these income tax payments had gone through the books as Mr. Erickson had originally charged them, to account 33 or 32, there would have been, [4549] would there not, some 247 thousand dollars— that is the amount of tax payments paid through those years—if they had gone through the accounts as Erickson set them up, that amount would be an addition charged to business ex-

(Testimony of L. Hicks Taylor.)

pense, when in reality it was personal expense; isn't that right?

A. If they hadn't of been removed from the tape, yes.

Q. But, when it came to you, you set them up in a drawing account?

A. That is correct, yes.

Q. Now, isn't this a good example of your statement, an accountant doesn't just merely take figures out of the subsidiary books and put the same figures in the final books of account, the ledger; you testified, I believe, that he must analyze and see that they are placed in the right place, is that correct?

A. Especially when something is labelled as this is, "Income Tax."

Q. That is what I mean.

A. When it is labelled properly, we put it under the proper account.

Q. In other words, it was obvious from the tapes and his books that here he was charging a personal expense to a business account, and that was obvious to you and [4550] that is why you set up the drawing account? A. That is correct.

Q. And if you hadn't put it in a drawing account, and the same thing occurred over all the years, there would be another $247,000 personal expenses charged to business, isn't that right?

A. It is possible.

Q. If you hadn't caught the mistake and corrected it?

(Testimony of L. Hicks Taylor.)

A. There wasn't any mistake here.

Q. I mean, the way he charged it, in account 33?

A. That wasn't any mistake.

Q. But it was——

Mr. LeSourd: (Interposing) Let him answer.

A. (Continuing) It wasn't a mistake, because he labelled each one of these what they are.

Because he put them in the miscellaneous column wouldn't mean it was a mistake.

Q. (By Mr. Keesling): My point is that throughout all these years, he put the account number as either account 32 or 33, and as you stated, both of those accounts are business accounts; that is right, isn't it? A. Yes, but—— [4551]

Q. (Interposing) And, further——

Mr. LeSourd: (Interposing) Just a moment. Let him finish.

A. (Continuing) He writes the account it covers. He has "Real Estate Tax, Unemployed Tax, Income tax, and Dues."

Q. (By Mr. Keesling): That is right, but——

A. (Interposing) He puts in the proper caption on this.

Q. But he put the incorrect account number?

A. The mix-up of accounts wouldn't make any difference if he labels it what it is.

Q. Now, throughout these years in view of the fact that he was charging this personal expense item to either Account 32 or 33, he was charging that to business and did it never occur to you that

(Testimony of L. Hicks Taylor.)

he was probably charging other personal expense items to business?

A. No. Here is a list with the list of the names of the commodities.

Q. I am referring only to Account 33.

A. 32 and 33, he has analyzed them himself.

He must have made a mistake in jotting the number down, but he has income tax and real estate tax properly labelled. [4552]

Q. That is right, but throughout all the years he improperly put down one of two things, either a business account 32 or business account 33, when in reality it isn't business at all, it is a personal account, and you picked up the mistake in 1938 and changed it and set up a drawing account in your ledger to make that correction?

Mr. Griffin: 1948.

The Court: 1948.

Q. (By Mr. Keesling continuing): 1948, excuse me.

A. Because he has it labelled "Income Tax".

Q. That is true. A. Yes.

Q. And my question and my point is:

That throughout these years where he put this label of a business account on a personal item, it was obvious from the tapes that he was charging it to 32 and 33, business accounts, did it never occur to you, where this involved business under income tax, forty-seven thousand over the years, didn't it ever occur to you that he was making the

(Testimony of L. Hicks Taylor.)

same mistake by posting other personal items to business accounts?

Mr. Moriarty: Object to the form of the question, It is argumentative and repetitious. [4553]

The Court: Well, if the witness understands the question——

Mr. Keesling: (Interposing) That is my last question.

A. For the simple reason that the numbers were only for Harold's convenience—the ledger here presents everything I got to the name of the account, the name of the account, when he put it down here, that was correct. The number didn't count. I didn't have any numbers up there. I didn't go by numbers. I went by the name of the account, and he always labelled the name of the account on here.

Q. (By Mr. Keesling): Then, as far as you were concerned, the number had nothing to do with it?

A. No, it was for his convenience in his work.

Q. In this particular instance, he had both a number and a label, but he labelled it correctly; he labelled the income tax part of it correctly, and the account number, 32 or 33, incorrectly?

A. Well, I paid no attention to the numbers.

Mr. Keesling: I have no further questions.

The Court: Mr. LeSourd, do you want to go on redirect, or——

Mr. LeSourd: (Interposing) I suggest that the rest [4554] of the cross be completed before redirect, your Honor.

(Testimony of L. Hicks Taylor.)

The Court: All right.

Cross Examination

Q. (By Mr. Obenour): Mr. Taylor, do you recall the name of the Assistant United States Attorney to whom you referred as handling the case involving your personal income tax?

A. It was Mr. Sageer, I think.

Q. Yes; at the time, I believe it was March 2d, when you entered your plea, March 2, 1950, I believe you stated that you had heard nothing about any contemplated action against Mr. Forster; is that correct?

March 2, 1950, is that the date you entered your plea in Tacoma?

A. Yes; I hadn't heard anything contemplated as to Mr. Forster.

Q. And similarly, when you received your sentence, April 25, 1950, you heard of no action concerning Mr. Forster?

A. When you say "action," Mr. Marx had called Mr. Forster on the 21st. That is all I had information on. [4555]

Q. And similarly, in the conference, October 25th, you had not heard that charges were brought against Mr. Forster? A. 27th.

Q. 26th; was that the date?

A. As I understand you, "Charges" or that I knew that he was being audited?

Q. No; of any charges being brought against him? A. No, I had heard of no charges.

Q. And disposition of the case involving your

(Testimony of L. Hicks Taylor.)

personal income taxes and the manner in which it was disposed of had nothing to do with your participation as a party in this case?

A. Not at all, no.

Q. Involving—referring now—to the interest of Mr. Forster, and, as I understand it, you stated you believed he was giving you net interest, is that correct?

A. I believe he was giving me his total actual earned interest.

Q. Net interest, you would refer to it?

A. I would say, if he had one type of business interest paid out, and one type received, he would take what he paid out or what he received, because this return does not call for detail. [4556]

The Clerk: Plaintiff's Exhibit 288 marked for identification.

(Plaintiff's Exhibit No. 288 marked for identification.)

Q. (By Mr. Obenour): Are you familiar with the instruction sheets that accompany the income tax forms, Mr. Taylor?

A. Well, I think I am.

Q. Handing you what has been marked as Plaintiff's Exhibit 288 and referring to the second section, can you tell the Court what that is?

Mr. LeSourd: Objected to, your Honor. It is not in evidence.

Mr. Obenour: I am asking for identification at this time.

Mr. LeSourd: I am sorry.

(Testimony of L. Hicks Taylor.)

A. Well, this appears to be 1945 instructions for Form 1040.

Q. (By Mr. Obenour): Which is the income tax form? A. Yes.

Mr. Obenour: We offer it at this time, if the court please.

Mr. Griffin: We have no objection.

(Whereupon, there was a brief pause.)

Mr. LeSourd: Well, if your Honor please, this is a rather unusual way of proving what the number is, if that is what is sought. I have no objection to it.

The Court: Exhibit 288, you have no objection? Exhibit 288 for identification may be admitted.

(Plaintiff's Exhibit No. 288 admitted in evidence.)

Mr. Obenour: If the Court please, I would ask to read the Jury the instructions pertaining to interest as shown in this instruction sheet for the year 1945.

Mr. LeSourd: If Counsel also brings out from the document that this pertains to personal interest.

The Court: Is that——

Mr. Obenour: It would be reading the instructions referring to dividends and interest that we have been referring to in this examination.

The Court: It refers to personal?

Mr. Obenour: For individual income tax returns.

The Court: For individual income tax returns, you may.

Mr. Obenour: The title is "1945 Instructions for Form 1040, U.S. Individual Income Tax Returns,

(Testimony of L. Hicks Taylor.)

General Instructions," and on the second page, the third paragraph, under instructions for page one of Form 1040, paragraph [4558] three:

"Dividends and interest: Enter the total of any dividend or interest unless wholly exempt from tax. See General Instructions under 'Exclusions From Gross Income'."

And the rest of the paragraph refers to things not in issue here.

Q. (By Mr. Obenour): Now, I would ask you, Mr. Taylor, to examine this paragraph referring to dividends and interest, and what is the only word italicized in that entire paragraph?

A. Well, it says "Total": "* * * * Total of any dividends or interest unless wholly exempt from tax."

Q. And the word "Total" is the only word italicized in the instructions, is that correct?

A. That is correct.

Q. And were those instructions continued throughout the period of the Indictment, 1946, '7, '8 and '9? A. Yes.

Mr. Obenour: May I have Exhibit 286 and 281, please? [4559]

(Whereupon, documents were handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Now, Mr. Taylor, I believe you stated that concerning this sale of the Denny Regrade property to Mr. Morris, that you handled the transaction and computed the amounts that were involved; is that correct?

(Testimony of L. Hicks Taylor.)

A. I presume I did, yes.

Q. And there is in evidence A-81, is there not, a receipt that was given for $500 paid by Mr. Morris as an advance payment upon the Denny Regrade property?

A. May I examine that receipt, please?

Q. Yes, sir. We are looking for it now.

(Whereupon, document was handed to the witness by Mr. Obenour.)

Q. (Continuing) Handing you Defendants' Exhibit A-81, does that not show that you received $500 down payment from Mr. Morris as an advance payment of a price of $15,500 upon this property to which we are referring?

A. It was my recollection that this instrument was never completed. I am just quoting from memory, that both of these were in my file, and that this was never actually consummated.

Q. Was there a payment of $500 in advance by Mr. [4560] Morris?

A. That I do not remember.

Q. Did you receive the $500?

A. No, I did not receive it.

Q. Do you know whether or not it was paid to Mr. Forster? A. That I do not know.

Q. Now, Exhibit 286, I believe you stated, and I hand you Exhibit 286, which is the note, and I believe your testimony was that those computations of figures on the back of that exhibit were in your handwriting? A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. And it shows the first item of a total of $15,500? A. Yes.

Q. And the next is an advance of $500 which is subtracted from $15,500? A. Yes.

Q. Then you gave Mr. Morris a credit of $500 upon the price of $15,500?

A. Yes, on the agreed contract.

Q. Leaving a balance of $15,000? A. Yes.

Q. And then your computation shows Notes, $12,680; is that correct? [4561]

A. Yes, that shows up here.

Q. And that is the same figure you used, which is the unpaid balance of the computation on the note from Mr. Forster to Mr. Morris?

A. Correct.

Q. And to that figure of $12,680 is added the figure $32.00 for the note stamps?

A. Revenue stamps.

Q. And that is the amount of stamps required for the transfer of this property?

A. I don't know. That was the amount allowed here.

Q. And you credited Mr. Morris with the payment of that? A. Yes.

Q. So that you took the total of $12,712 and that was subtracted then from the fifteen thousand?

A. Yes.

Q. So that Mr. Forster was credited with fifteen thousand six hundred eighty dollars and you gave Mr. Morris credit for the tax stamps, and that left $2,288? A. Yes.

(Testimony of L. Hicks Taylor.)

Q. And Mr. Forster received that money?

A. I believe he did. I believe I have seen it somewhere.

Mr. Obenour: May I have Exhibit 71?

Q. (By Mr. Obenour): Would you add the total, please, handing you Exhibit A-118 for the total of the stamps as shown on that photostat of the deed?

A. $32.55.

Q. So that is within 55 cents of the figure you used?

A. I probably called the County Auditor and asked him what the stamps would be, on a deed for $14,500.

Q. And, handing you Plaintiff's Exhibit 71, the second page, under date of March 2, 1946, the third item down, what is that item, please?

A. $2,288.

Q. And is that the same figure that you have for your balance? A. Exactly.

Q. And what is the name opposite?

A. Frank L. Morris.

Q. So that Mr. Forster then received the entire amount of $15,000, to the best of your knowledge?

A. May I have that? [4563]

Q. Pardon me; is that correct?

A. That is correct. I believe I testified that there was $15,500 credited.

Q. And the entire amount was then received by Mr. Forster? A. That is right.

Q. Handing you Plaintiff's Exhibit—rather, Defendants' Exhibit A-63, this was an audit report

(Testimony of L. Hicks Taylor.)

submitted by you, December 31, 1932, I believe, is that correct?

Mr. LeSourd: If your Honor please, I don't like to object all the time, but I want to be sure to preserve our record on these matters, that we feel are beyond the scope of the direct and irrelevant and immaterial, and I want to object to this at this time for that purpose, and may I have a continuing objection to it?

The Court: I might say your objection was withdrawn on Exhibit A-64.

Mr. LeSourd: Yes, that is right; I am sorry.

The Court: If you want to make objection to other matters, you may.

Mr. LeSourd: Yes, thank you.

Q. (By Mr. Obenour): That is your audit report that you prepared for Mr. Forster in 1932?

A. Yes. [4564]

Q. I believe you stated that it was quite detailed? A. Yes.

Q. That was a complete audit report?

A. Yes, a complete audit report.

Q. Did you explain each of those items to Mr. Forster?

A. It is pretty hard to remember, Mr. Obenour.

Q. You discussed it with Mr. Forster?

A. Well, it is my recollection that I did.

Q. Did he ask you any questions concerning it?

A. I am afraid that is too far back to remember.

Q. Do you have any reason to believe that he did not understand your report?

(Testimony of L. Hicks Taylor.)

A. Well, I thought that he understood it when he looked at it.

Q. And you continued to make reports to Mr. Forster through the year 1950?

A. Not audit reports.

Q. Not audit reports? A. No.

Q. But you continued to make reports?

A. Profit and loss statements and balances.

Q. And then after first having submitted [4565] the audit reports of 1932, they then were limited to balance sheets and profit and loss statements in the years of the Indictment and to 1950?

A. Yes.

Q. That was because, was it not, Mr. Forster was interested in two things, one what he had, what he owned, and what he was making?

A. Well, I would assume that that would be what he was expecting to receive.

Q. And that would be the information that he would be receiving each month in your balance sheets and profit and loss statements?

A. Yes, taken from the general ledger.

Q. And you discussed each with him?

A. Oh, I think most of the time we discussed them.

Q. And then was there any reason to believe that he did not understand that; any of the items you have on your balance sheet or profit and loss?

A. Well, I always felt that he knew what they meant.

Q. Now, handing you Defendants' Exhibit A-91,

(Testimony of L. Hicks Taylor.)

which I believe you stated was a report of the Alpine Dairy operations for the ten-year period, 1938 to 1947, is that correct? [4566]

The Court: What number is that?

Mr. Obenour: A-91, sir.

Q. (By Mr. Obenour): Did you get it? A-91?

A. Mr. Obenour, I guess I didn't follow your question.

Q. What is that document?

A. Well, this appears to be Alpine Dairy operations, profit and loss for a ten-year period, 1938 to 1947.

Q. And, as I understand your testimony, it was that you prepared that document from the tax returns of Mr. Forster, is that correct?

A. It is my recollection I stated that I prepared them from the tax returns.

Q. And who requested this particular report?

A. I am not certain whether the bank did or not.

Q. It was submitted to Mr. Forster?

A. Well, Mr. Forster saw it, yes.

Q. Did you explain it to him?

A. Well, I don't know that there was any great explanation but all the figures were here.

Q. Did he know that it was prepared from his tax returns?

A. Oh, that I don't know; I think I might have told him. [4567]

Q. Could it be that Mr. Forster was interested in what he was showing on his tax returns, rather

(Testimony of L. Hicks Taylor.)

than what he was showing on his books or what his books would indicate to be his profit?

A. Maybe I don't quite get the sense——

Mr. Griffin: (Interposing) I object to the form of that question. It is argumentative, and suggestive, and a conclusion, and speculative. If he knows, I have no objection.

The Court: Objection sustained as to form.

Q. (By Mr. Obenour): Now, you have testified, I believe, Mr. Taylor, that the various statements of balance sheets and financial statements, particularly A-65, A-92 and A-93, and A-94, and A-95 and A-97, and A-99, and A-100, were all prepared by you? A. Might I——

Q. Yes, sir.

(Whereupon, documents were handed the witness by Mr. Obenour.)

Q. (Continuing) And they were prepared during the '30's; would you verify that?

A. A-65 is a balance sheet and profit and loss statement as of December 31, 1935, prepared for the Peoples Bank and Trust Company.

A-92 is a balance sheet and profit and loss [4568] statement of the Issaquah Creamery Company prepared as of December 31, 1933, prepared by me.

The Court: That is what you want to know?

Mr. Obenour: Yes.

A. (Continuing) A-93 is Issaquah Creamery balance sheet and profit and loss statement as of December 31, 1934. It was prepared by me.

(Testimony of L. Hicks Taylor.)

A-94 was a statement given to the Issaquah State Bank, December 30, 1935, prepared by me.

A-95 is a statement as to December 31, 1935, to give to the First National Bank of Stanwood, prepared by me.

Exhibit A-99 is a balance sheet of the Issaquah Creamery Company as of December 31, 1938, prepared by me.

A-100 is a balance sheet and profit and loss statement and a number of work sheets attached to it, prepared by me.

Q. (By Mr. Obenour): These were all prepared during the '30's? A. Yes.

Q. I believe you described these as being prepared during critical times for Mr. Forster, is that correct? A. Yes.

Q. You discussed each of them with Mr. Forster? [4569]

A. It is my recollection that I did.

Q. What was Mr. Forster drawing from Issaquah Creamery during these critical times?

A. As of December 31, 1938, his salary was eighteen thousand dollars.

Q. And prior to that, it had been ten thousand five hundred dollars?

A. To the best of my recollection, yes.

Q. And was this salary voted for Mr. Forster?

A. Well, I believe so. As far as I remember.

Q. By whom?

A. By the Issaquah Creamery Company, Incorcorporated.

(Testimony of L. Hicks Taylor.)

Q. And of whom did that consist?

A. Mr. Forster, and I was a qualified shareholder acting as secretary and director.

Q. So that it was you and Mr. Forster that voted this salary for Mr. Forster?

A. Well, I probably said "Aye", but I wasn't very strong in there.

Q. Was it voted at all?

A. I think so.

Mr. LeSourd: Just a moment. I will object as irrelevant and immaterial.

The Court: Objection sustained.

Mr. Obenour: If the Court please, I go on the basis of prior testimony that this man has made [4570] concerning the effect of voting salaries.

The Court: I don't think it is material. You object to it.

Mr. LeSourd: Yes, sir.

Mr. Obenour: I would ask one more question, if the Court please, as to whether this salary was being voted, if that is why it was included as such on the tax return. In effect, that is what he stated was the effect on the Renton salary.

The Court: I don't follow you. Do you want to say it again?

Mr. Obenour: He stated that the reason the salary was or wasn't included as pertaining to Renton was because Forster was not voted while Baskett and Schneider were, and I am asking if this is the same basis he allowed the Issaquah salary.

The Court: Well, objection sustained.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour): Why was the salary of $10,500 voted during these critical times, Mr. Taylor?

Mr. LeSourd: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Q. (By Mr. Obenour): The effect of this ten thousand five hundred [4571] dollars salary was to reduce the profit of the company during this time, was it not?

Mr. LeSourd: Same objection, your Honor.

The Court: Sustain the objection.

Q. (By Mr. Obenour): I believe you stated Mr. Forster did not draw this salary during this time, did you?

A. To the best of my recollection, sometimes he didn't draw it all.

Q. In fact, that was the basis of some adjustment you made in some of these exhibits and statements that you prepared?

A. Yes, for credit purposes.

Q. I believe you stated he drew $300 a month during this time?

A. Well, I don't remember exactly what he was drawing.

Q. But the figure of the salary of 10-5 was carried through those years until it was raised to eighteen thousand?

A. Yes, I think that is true.

Q. And whether you used the figure of 10-5 for his salary, or what he actually drew, the amount of

(Testimony of L. Hicks Taylor.)

thirty-six hundred, the difference in those figures made the difference in your calculations as to whether the [4572] company showed a profit or loss; isn't that correct?

Mr. LeSourd: Objected to as irrelevant and immaterial.

The Court: Was that item covered?

Mr. Obenour: Yes, sir; we would go into that in detail here with these exhibits as it was on the examination on the difference in the exhibits. Mr. Griffin, in introducing these exhibits——

Mr. LeSourd: (Interrupting) Maybe I am confused as to counsel's purpose.

The Court: Yes. I don't know that the introduction of these exhibits permits a detailed examination of various items in them, unless they are related to the period covered. That wasn't the purpose of their admission.

Mr. Obenour: It is my understanding, if the Court please, it was shown on the examination by Mr. Griffin that these adjustments were made.

The Court: I think, on the drawing account, there was some testimony.

Mr. Obenour: That is to what I was referring, the salary which was actually charged, which was the basis of his adjustment in these balance sheets, as compared to the salary he really received.

Mr. Griffin: My purpose on that, if the Court [4573] please, was to show that there was a place to charge personal items. I didn't go into the matter of salary.

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: I would have no objection to this, your Honor, if it went to the matter which I think was covered before, the fact that undrawn salaries were taken out of the statements that went to the bank when they wanted to show what the actual credit situation was, but I am confused as to what counsel is attempting to go into here.

The Court: Well, I am not clear what the idea is, either. The Court will sustain the objection.

Q. (By Mr. Obenour): What is the purpose of a balance sheet, Mr. Taylor?

A. A balance sheet is to show the assets and liabilities, and the assets and fixed assets of a company, less liabilities, to develop a net worth.

Q. To show what a person or a company is actually worth, is that correct?

A. That is correct.

Q. A man can own just so much, can't he?

A. Well,——

Q. (Interposing) Of fixed amount?

The Court: What is the question now? [4574]

Q. (By Mr. Obenour continuing): A man owns just so much property, is that not true?

Mr. LeSourd: Objection.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): You stated that these balance sheets show many stories, according to the purpose?

A. Did I say "many stories"? I meant to say that they have purposes.

(Testimony of L. Hicks Taylor.)

Q. And they show a different story with each purpose.

A. Well, I might explain that slightly, that people try to obtain credit from the bank and borrow, and the bank is not interested in income tax figures; they are interested in market value, and many times, statements that are given to banks do not agree with the books of a bank depositor, because he is giving a market value.

Q. What is the purpose of a profit and loss statement?

A. That is to show what a man's operating profits are for the period.

Q. Take the amount of money he received and subtract the amount of money he spent, and that shows a profit and loss?

A. That is in a sense it, unless you have what [4575] they call revolving figures, such as inventory.

Q. Now, these tell many stories, too, according to their purpose?

A. Profit and loss statements do not tell many stories, no.

Q. They do not tell many stories?

A. No, they tell one story, as a rule.

Q. They tell one story, as a rule? A. Yes.

Q. Now, the Government is concerned, is it not, with a man's profit and loss statement?

A. That is the principal thing they are interested in.

Q. And they are interested in exactly the same

(Testimony of L. Hicks Taylor.)

figure, are they not, that the bank is interested in in the profit and loss statement?

A. That is true.

Q. Where did you get the figures for your statement in these exhibits that you have there?

A. They were taken from the books, and possibly some appraisals put into some of the things.

The Court: When you referred to "these",——

Mr. Obenour: (Interposing): Exhibits previously referred to.

The Court: Profit and loss statements and [4576] balance sheets for the 1930 period?

Mr. Obenour: Yes.

A. I might read to you from Exhibit 94 a little footnote that might give you a little thought on this. This is a balance sheet of November 30, 1935, given to the Issaquah State Bank. The milk routes which have been developed in the natural operation of the business, many times you can't sit down and say a route—I have spent so much over six months' time, and make a route for 300 customers, in six months' time, that starts in with 100. That route is worth more money, so Mr. Forster, being familiar with those things, placed an appraisal on his routes, and I made a footnote here for the Issaquah State Bank, "Milk routes have been increased $20,000 to actual value and surplus credited."

In other words, to make a balance sheet, if you put it on one side, you have to put it on the other, so surplus was credited with this $20,000 to show that Mr. Forster felt that his routes were worth

(Testimony of L. Hicks Taylor.)

$20,000 more than appeared on the books, so while he has no definite profit, he is putting a value on them for loan purposes.

Q. (By Mr. Obenour): You got the figures for the statement from the books? [4577]

A. It is my recollection that they were always taken from the books.

Q. And were they all prepared for the purpose of showing the bank, Bank of Stanwood, Peoples Bank, Issaquah State Bank?

A. That was the critical period we mentioned.

Q. Profit and Loss should be the same way, submitted to the bank, or submitted to the Government, is that correct?

A. As a rule they agree.

Q. Would you take Exhibit 92, please, and what purpose was that prepared for, that exhibit?

The Clerk: A-92.

Q. (By Mr. Obenour continuing): A-92.

Mr. LeSourd: It will be understood, your Honor, that our previous objection to this line of testimony and the exhibits continues at this time as to inquiry by counsel for the Government? We objected to these exhibits when they came in as being irrelevant and beyond the scope of the direct examination, and I assume, having been entered once over our objection, now everyone, including ourselves, will have to go in and explain them, but I think for the record we should have our objection continue. [4578]

The Court: The objection may show. If the Government has no objection, you may have a con-

(Testimony of L. Hicks Taylor.)

tinuing objection on that ground, and if there is any specific objection to a question, you will raise it.

Mr. LeSourd: Yes.

The Court: Your objection then will go to those matters to which you objected.

Mr. Moriarty: You mean the examination on the exhibits; is that what you mean, Mr. LeSourd?

Mr. LeSourd: Yes, the examination on all these early years that we feel are not a part of the case.

Q. (By Mr. Obenour continuing): What is A-92 please, sir?

A. A-92 is a balance sheet and profit and loss statement as of December 31, 1933.

Q. What is the purpose for which that balance sheet and profit and loss statement were prepared?

A. Just examining it, I would say that it was just the regular year-end statement.

Q. That was the one that was used in the preparation of the tax returns?

A. Well, not seeing the tax return, I presume it is.

Q. The one for the year-end?

A. That would be given—— [4579]

Q. (Interposing) Would you take Exhibit 95, please? And would you hold——

The Court: (Interposing) A-95?

Mr. Obenour: A-95, yes, sir.

Q. (By Mr. Obenour continuing): Would you keep that A-92 out now, please, for the profit you show there? A. Yes.

Q. What is that document?

(Testimony of L. Hicks Taylor.)

A. This was a document prepared for the First National Bank of Stanwood.

Q. And that is on the outside page of this Exhibit A-95? A. That is right.

Q. On the inside of that page, you have net profits, do you not, and a figure for the year 1932; what is the net profit you show on Exhibit A-95?

A. Again, I must call your attention——

Q. (Interposing) What is the figure, please?

A. (Continuing) ——that this was made for credit purposes, and I will explain it.

Q. Would you please answer the question?

Mr. LeSourd: Mr. Obenour, was your question for the year 1932?

Mr. Obenour: 1933. [4580]

Mr. LeSourd: 1933.

A. This statement——

Mr. Obenour: If the Court please, I ask that this witness answer the question, please.

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter.)

"Q. On the inside of that page you have net profits, do you not, and a figure for the year 1932; what is the net profit you show on Exhibit A-95?

"Q. What is the figure, please?

"Q. Would you please answer the question?"

The Court: Now, the question is that it was written on A-95?

Mr. Obenour: Yes, sir.

The Witness: That is for 1932.

(Testimony of L. Hicks Taylor.)

Mr. Obenour: 1933.

A. 1933, I show an earning of $12,697.27.

Q. (By Mr. Obenour): That is twelve thousand?

A. That is right.

Q. And that is how much greater than the profit and loss statement you prepared at the end of your year's operation? [4581]

A. It is $10,677.87 more. [4582]

* * * * *

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Cross Examination—(Continued)

Q. (By Mr. Obenour): We were discussing Mr. Taylor, the differences in the profits shown on the profit and loss sheet prepared for the end of 1933 and for the year 1934, and with the figure you show for the profit on the financial statement, Exhibit A-95, submitted to the Bank of Stanwood in 1935; do you recall? A. Yes.

Q. Did the Issaquah Creamery for the year 1933 make a profit of $2,019.40 or did they make a —or did they make a profit of $12,697.27?

Mr. LeSourd: Objected to, your Honor, as irrelevant and immaterial, and beyond the scope of direct examination.

The Court: Objection overruled.

Mr. LeSourd: May we have a continuing objection to this line, your Honor?

(Testimony of L. Hicks Taylor.)

The Court: Yes; the same objection you made last night? [4590]

Mr. LeSourd: Yes, sir.

The Court: The record may show you have a continuing objection. That is agreeable?

Mr. Obenour: Yes, sir.

A. The profit shown on the balance sheet and profit and loss statement of the Exhibit A-92 for the year 1933 shows a profit that—I am not—not having the tax return, I assume that this was what was reported on the tax return, $2,019.40.

Q. (By Mr. Obenour): Was the profit for Issaquah Creamery for the year 1933 $2,019.40 as shown on that profit and loss, or was it $12,697 as shown on Exhibit 95?

A. The profit that is shown on Exhibit A-95, prepared for credit purposes, displays $12,697.27 which has been developed by restoring, or applying undrawn salary and a depreciation figure that is estimated on our—on the Issaquah Creamery part as not applying altogether from a credit standpoint. The Internal Revenue regulations allow a determinate depreciation, usually a suggested depreciation schedule, which we have used throughout the period.

So, in order to——

Mr. Obenour: If the Court please, I would ask that the witness be directed to answer the [4591] question as put. There is one of two answers that could be given, and we would request that the witness be so directed to answer.

Mr. LeSourd: If your Honor please, he is an-

(Testimony of L. Hicks Taylor.)

swering it and I submit he should be entitled to answer it.

The Court: You may. You may proceed with the answer.

The Witness: Thank you.

A. (Continuing) The thought in this particular position is: a banker is not sitting in the same position that the Internal Revenue is. A banker is interested in the development of value, market value. He is not dealing with income tax.

So, at this particular time, which is back in 1933, right at the peak of the depression, borrowings were very difficult to get. The people were jumping off of the Smith Tower, and all places.

The Court: Mr. Taylor, your answer will have to be more confined than that. You may explain it without the various diversions.

The Witness: I apologize, your Honor.

A. (Continuing) So, to develop a figure for the bankers' perusal, we took the $2,019.40 that shows on the book figures, and we restored $6900 of Mr. Forster's [4592] salary that he had not drawn, and we restored a portion, $3,777.87 to the depreciation, which gave us a possible profit of $12,697.27 which is shown on the banker's report.

Q. (By Mr. Obenour): In 1934, did Issaquah Creamery lose $1.75 or make $11,469.36?

Mr. Obenour: And I would ask the Court, please, the witness to be instructed to answer which of those two figures is the true picture of the profit

(Testimony of L. Hicks Taylor.)

and loss of the Issaquah Creamery for the year 1934.

The Court: Mr. Obenour, the witness is dealing with statements here, and the Court doesn't believe it should instruct the witness how the answer should be given in this case.

A. The profit on the statement, on Defendants' Exhibit A-93, does show a loss of $1.75, but the same explanation carries forward into 1934 that I just explained for 1933.

Q. (By Mr. Obenour): Did you discuss these two figures with Mr. Forster in 1935?

A. Yes.

Q. Did you discuss the figure that you prepared on Exhibit A-95, the statement submitted to the Bank of [4593] Stanwood in 1935? A. Yes.

Q. Did he understand the difference between a showing of a loss of $1.75 in the year 1934 and a profit of $11,469 that you show as a profit for the previous year?

Mr. Griffin: Objected to as calling for the conclusion of a witness not based upon fact. Asking for another man's opinion of another man's understanding.

The Court: I believe the objection is well taken, Mr. Obenour——

Mr. Obenour: (Interposing) Yes, sir.

The Court: (Continuing) ——as to form.

Q. (By Mr. Obenour continuing): Did Mr. Forster indicate in any way that he did not understand

(Testimony of L. Hicks Taylor.)

the difference in these two figures that you prepared for the statement of the bank at Stanwood?

Mr. Griffin: Object to the form of the question. It calls for his indication.

The Court: The question is, did he indicate?

Mr. Obenour: Yes, sir.

The Court: I assume that could be answered "yes" or "no."

The Witness: I am lost on the question. I am sorry. [4594]

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. No.

Q. (By Mr. Obenour): You have Exhibit A-65 and Exhibit A-95 there, please? A. Yes.

Q. What are the dates of each of those exhibits?

A. They are both dated December 31, 1935.

Q. What was the purpose of A-65?

A. I believe it is the year-end final statement of the Issaquah Creamery.

Q. And I believe you stated A-95 was for the purpose of credit from the bank at Stanwood?

A. Yes.

Q. What do you show for sales on A-65?

A. $477,961.54.

Q. What do you show for sales on A-95?

A. $480,472.26.

Q. A three thousand dollar adjustment, approximately?

(Testimony of L. Hicks Taylor.)

A. Yes, it appears some place else in the statement. [4595]

Q. That is a balance sheet item or profit and loss? A. Profit and loss item.

Q. Profit and loss item? A. Yes.

Q. And cash, for A-65 is what?

A. $2,197.03.

Q. And cash on A-95 is what?

A. It shows an O.D. of $6,213.76.

Q. Is that a balance sheet item or profit and loss item? A. Balance sheet item.

Q. And your inventory for A-65 is what?

A. $10,167.00.

Q. And for 95? A. $11,167.00.

Q. That is an adjustment of an even one thousand dollars? A. That is correct.

Q. Accounts receivable on A-65?

A. $27,709.69.

Q. And on A-95? A. $30,709.69.

Q. That is an even adjustment of three thousand dollars? A. That is correct. [4596]

Q. And those last two items are balance sheet items or profit and loss items?

A. They are balance sheet items.

Q. You made these adjustments? A. Yes.

Q. Where did you get the figures?

A. Without having all the work sheets, I am going to have to declare it from recollection. It appears that we have adjusted $1,000 to inventory from accounts receivable, and that a reserve account has been eliminated in the one statement.

(Testimony of L. Hicks Taylor.)

Q. Where did you get the basis?

Who gave you these figures for this adjustment, then? A. They were calculations.

Q. Calculations by whom?

A. I presume by me. I prepared them.

Q. Were they taken from your books?

A. Yes, these were taken from the books.

Q. These show a different picture on the balance sheet?

A. They were for two distinct purposes, you know.

Q. This is an instance again of where the difference in purpose is a difference of the story that a [4597] balance sheet shows? A. Yes.

Q. And what is your profit for A-65?

A. It shows a loss of $1,369.37.

Q. And for A-95?

A. It shows a profit of $13,732.75.

Q. That is an adjustment upward of $15,000?

A. Yes.

Q. Is that also the case where the profit and loss statement shows a different story for a different purpose, too? A. Yes.

Q. Then, a profit and loss, as well as a balance sheet, shows a different story, depending on the purpose of it?

A. From a credit standpoint, yes.

The Banker is interested in market, not cost; interested in market, what a liquidated value can develop.

(Testimony of L. Hicks Taylor.)

Q. Did Mr. Forster complain in 1933 about a profit of $2,000?

A. You are asking one that is too far back; I do not remember.

Q. How about a loss of $1.75 in 1934, did he complain about that? [4598]

A. I do not remember.

Q. Did he complain about his loss of $1300 in 1935? A. I do not remember.

Q. You have A-99 and A-100 there, please?

A. I have A-99.

Q. Do you have those two exhibits?

A. I have A-99 and A-100, yes.

Q. What is A-99, please?

A. It is a statement of the Issaquah Creamery Company, December 31, 1938.

Q. And A-100?

A. That is the same statement attached to the work sheet, and it is part of the working books of the company.

Q. They are both balance sheets for the same date, Issaquah Creamery? A. Yes.

Q. What was the purpose of A-99?

A. There isn't anything to indicate what the purpose of it was for.

Q. What was the purpose of A-100?

A. That is the work sheet and balancing figures from the ledger of the Issaquah Creamery Company.

Q. Was that submitted to anyone for loan purposes? [4599] A. No, not that I recollect.

(Testimony of L. Hicks Taylor.)

Q. What is your inventory figure for A-99?

A. $15,169.43.

Q. And A-100? A. $16,891.83.

Q. Inventory? A. That is correct.

Q. Accounts receivable? A. $45,650.56.

Q. A-100? A. $56,650.68.

Q. Adjustment of $11,000? A. Yes.

Q. Where did you get these figures?

A. I don't know.

Q. Did you get these figures from Mr. Erickson?

A. Well, Mr. Erickson never prepared any of these. I prepared these.

Q. Did he give you the information that went into your accounts receivable?

A. On this particular one, that comes from the ledger of the company. This is the accounts receivable on the ledger.

Q. However, he gives you the information from which you make your accounts receivable into your ledger, [4600] does he not? A. That is right.

Q. So that you made the adjustment on your ledger and on your work sheet of $11,000?

A. Yes, for some purpose.

Q. Did you tell Mr. Erickson then that you made this adjustment? A. No, I did not.

Q. Would it be necessary for him to have to make any adjustment in his books after you adjusted yours?

A. His book shows the same as my ledger, as far as I know.

Q. And which figure is that?

(Testimony of L. Hicks Taylor.)

A. $56,650.68.

Q. That adjustment is for what reason?

A. You are handing me a sheet that is quite foreign from anything connected with it, so that I can't tell you what the purpose of this was for. There was some reason for it.

Q. Depreciation reserve is what on these two?

A. It shows on A-99 as $54,195.80.

Q. And on A-100? A. $62,938.77.

Q. An adjustment of $8,000? A. Yes.

Q. And routes?

A. Routes show $9,514.55 on Defendants' Exhibit A-100; A-99, routes on A-99, $28,552.02.

Q. And that was an adjustment of $19,000?

A. That was to strike a market value of routes.

Q. That was a market value, and I think you said you got that figure from Mr. Forster?

A. He would be the only one that could give me that figure.

Q. He made that appraisal, I believe you stated?

A. He must have, if it is here.

Q. And you discussed both A-99 and A-100 with Mr. Forster?

A. It is my recollection I did, yes.

Q. And milk accounts payable on A-99?

A. $11,188.17.

Q. And on A-100? A. $9,616.53.

Q. And notes payable, A-99?

A. $12,709.20.

Q. A-100? A. $4,825.90.

Q. An eight thousand dollar adjustment?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. Did you discuss these figures with Mr. Forster? [4602]

A. You mean the details of them?

Q. Yes.

A. Well, I don't know that we went into detail, but I know that I discussed these two statements with him generally.

Q. Cash was what? A. $2,406.42.

Q. And A-100? A. $4,797.86.

Q. Which statement was correct?

A. This statement, and this statement. They are both correct.

Q. Both correct?

Then, similarly, with A-65 and A-95?

A. That is correct.

Q. I believe you stated they were prepared, or the difference between them was, because one would be prepared for the bank for loan purposes and the other would be prepared at the end of your business? A. Correct.

Q. And you discussed them all with Mr. Forster?

A. It is my recollection that I did, yes.

Q. And you discussed them, I believe you stated, with the bank, is that correct?

A. I believe so, yes. [4603]

Q. Which banks are you referring to now that you discussed these with?

A. The bank at Issaquah.

Q. The bank at Stanwood?

(Testimony of L. Hicks Taylor.)

A. I don't recollect talking to Mr. Bud Hall at Stanwood.

Q. A-95 was submitted to Stanwood, wasn't it?

A. Well, it must have been, because I have marked First National Bank of Stanwood to show an exact copy of what was given to them.

Q. Did you explain your adjustments then to the man at the Bank of Stanwood, Mr. Bud Hall?

A. That I do not remember. I am quite sure I must have.

Q. Did he understand you were adjusting these figures from these statements you prepared at the end of the year from the one he would receive from you?

A. If we contacted Mr. Hall at Stanwood, I have written right here, right on the balance sheet, that was made for the Issaquah Creamery, from the books and I show right here, so the whole world can see it, "The exact figures that were shown to Mr. Hall."

Q. Where is that? Where is that, please?

A. What is that?

Q. Where are those figures that the whole world [4604] can see?

A. Right here on the statement that applies to our income tax return.

Q. I see. Did you also submit these statements to the Peoples National Bank, main branch?

A. That I don't remember. I don't have it here.

Q. I believe you stated you were audited by the Tax Division of the Government eight times, and

(Testimony of L. Hicks Taylor.)

they found no deficiencies in the thirties, is that correct?

A. I do not believe I made such a statement.

Q. Were the books and records of Issaquah audited by the Internal Revenue during that period?

A. I have recollection of an audit made in 1935 or '36 by an Internal Revenue Agent.

Q. Did you show both of your statements to the Internal Revenue Agent when he audited your books?

A. It is my recollection that I laid these on his desk for him to see, and showed him this, and if I remember right, his remark was he didn't care anything about the credit. He wanted to know what the book showed and what the income tax returns showed.

Q. So that he thought if you were showing a loss of $1.93 and a profit on another statement he said he didn't care? [4605]

A. He did not care how we handled our credit picture at all. He wanted to know the facts for the income tax, and he checked them out.

Q. Did you explain the difference in your depreciation percentages; that the one you were using for the Internal Revenue was not fair and you used a fair one for your credit?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour): Did you state that the

(Testimony of L. Hicks Taylor.)

depreciation rate that you used for your Internal Revenue computations was not fair?

Mr. LeSourd: Object to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Obenour): It is my understanding, Mr. Taylor, that you testified that the rate you used for the Internal Revenue computations, or for your computations at the end of the year, was not a fair figure; is that a correct understanding of your testimony?

A. No, it is not. I used the depreciation studies that show in the regulations in the working of the Income [4606] Tax Return.

Q. But the different depreciation, as used for your credit, is that what—more true or fair?

A. It is an appraisal.

Q. It is an appraisal; you explained the difference in the way you figured Mr. Forster's salary to the Internal Revenue agents?

A. As I remember it, he looked at this, if I remember correctly. There is nothing—it is right there on that sheet——

Q. (Interposing) Did you explain it to him?

A. I probably did. I don't just remember; that is a long time back.

Q. I believe you stated these were all done at the request of the bank because they were critical times; is that your statement?

A. Well, you place the bank—I am going to answer it "no." To place the bank in that position is not hardly fair. They never asked me to give them

(Testimony of L. Hicks Taylor.)

anything false, and they knew exactly what this was that we were giving them.

Q. It is my understanding of your testimony that you stated you were requested by the bank to make these adjustments, and made these adjustments in the presence of the bank officials; is that a correct understanding [4607] of your testimony?

A. I would say we showed the bankers what we had done.

Q. Then you were not making these adjustments at the Bank?

A. We probably discussed them before I completed the statements.

Q. But you did explain to the bank in each instance the difference in your adjustments from the computations you made regularly at the end of business and the computations you submitted to him for the picture of the business?

A. It is my recollection that they were discussed with them.

Q. And Mr. Forster was present in these discussions?

A. Well, I rather think so. It is my recollection that he was always present.

Q. And the purpose of this was to enable the bank to make loans during these critical times to Mr. Forster?

A. That was the principle, yes.

Q. It was a critical time for Mr. Forster, I believe you stated?

A. Yes, it was quite a critical time.

(Testimony of L. Hicks Taylor.)

Q. And the attempt was then to have papers to show [4608] the Bank Examiners—for the banks to show the Bank Examiners, to support the loans they would make to Mr. Forster; is that correct?

A. Well, I would assume that is the purpose.

Q. And would the Bank Examiner understand the difference in your adjustments?

Mr. LeSourd: I object to that.

The Court: Objection sustained.

Q. (By Mr. Obenour): I believe you stated nobody was hurt by this?

A. I believe the businesses continued to run and operate.

Q. Mr. Forster's businesses? A. Yes.

Q. And Mr. Forster benefited in each instance from these adjustments, is that correct?

A. Oh, when you—I will say "yes" to the question. When you deal with a bank, you don't say that anybody benefits. You are trying to accomplish some purpose.

Q. Well, Mr. Forster succeeded in what he wanted, then, in any event; didn't he?

A. It worked out satisfactory, yes.

Q. He got his loan in each instance?

A. Yes. [4609]

Q. During the critical times that enabled him to stay in business?

A. Yes, that is correct.

Q. Now, A-109 here shows a series of loans you made to Mr. Forster; do you recall those?

A. Yes, I recall them.

(Testimony of L. Hicks Taylor.)

Q. Which statement did you use for the basis of your loans to Mr. Forster, Mr. Taylor, the ones for the bank or the ones you prepared at the end of the business?

A. I guess you gave me some notes that were not——

Q. (Interposing) I am sorry. You recall the notes? For instance, which statements did you depend on for making those loans, Mr. Taylor?

A. The ones I made myself.

Q. Now, you continued to make these financial statements to the various banks through 1950, didn't you, Mr. Taylor? A. Yes.

Q. And they were in each instance given to the bank in order to secure credit for Mr. Forster in his enterprises?

A. Yes, that is correct.

Q. Or to support credit already extended?

A. Yes. [4610]

Q. I believe the evidence here, the earliest one, shows is 1941 that we have; December 31st,—July 31, 1941, submitted to the National Bank—rather, Peoples National Bank, July 31, 1941, and you prepared them right on through to the Peoples Bank, clear through 1950?

A. Yes, as I remember.

Q. And these were done at the Bank's request?

A. Usually the bank's request, yes.

Q. And you discussed them with Mr. Forster?

A. Well, it is my recollection that we went over the statement.

(Testimony of L. Hicks Taylor.)

Q. You, apparently, according—this 252 is your work sheet balance and financial statement for February 28, 1948, is that correct? A. Yes.

Q. You continued to adjust these statements you submitted to the Peoples Bank in the '40s as you did for the critical times in the '30s?

A. No, not——

Q. (Interposing) Did you adjust your figures for the financial—for any of these financial statements in the '40s, exhibits 121 through 128?

A. No, not that I recollect any. Mr. Forster's financial position was fairly strong, so it was not [4611] necessary, not necessary to bring in appraisals of routes as much so at that time as it was in the critical period.

Q. Not being critical, and Mr. Forster's position then being more sound, you then used the figures from your books; is that true?

A. As a whole, yes.

Q. This 252, did you show that to Mr. Forster before you prepared the typewritten copy?

A. This was not a submitted financial statement from the books. I think I went to great lengths explaining the purpose of this particular statement in my testimony.

Q. But you did explain it to Mr. Forster before a typewritten copy was prepared?

A. It is my recollection that we went over it, yes.

Q. Calling your attention to this U. S. Bonds, the entry at the bottom of the first group, U. S.

(Testimony of L. Hicks Taylor.)

Bonds has been drawn—a line through it, and an arrow up to cash where U. S. Bonds was put in, and then the word "Look". Who wrote that?

A. A stenographer in my office did that.

Q. The stenographer made that but you discussed it in the form that it is now with Mr. Forster, is that [4612] correct?

A. Yes, as I recollect.

Q. And the cash showed 293? A. Yes.

Q. $293,000?

A. My testimony shows how that figure was arrived at.

Q. You stated also, I think, that you had already reached a tentative net worth of $755,000 before you had been contacted secretly by a bank officer; is that a true understanding of your testimony?

A. Yes, a bank official called me, and talked to me about cash position.

Q. Secretly; what was the reason you already had a tentative net worth established?

A. Because a financial statement had been prepared, the original financial statement, by looking at this from my recollection, showed a cash balance of $93,848.11, and for credit analysis—anticipation statement, I will call this—they wanted to know what and how soon Mr. Forster could liquidate loans if a crisis came.

Q. Then this tentative net worth statement that you had prepared before you were contacted by the

(Testimony of L. Hicks Taylor.)

bank was not the statement you submitted finally to the bank, is that correct? [4613]

A. They—while I don't see it here, they had the original statement, as well as this, as I remember.

Q. Didn't you say you had already reached a tentative net worth before you were contacted by the bank?

A. Well, if I did, tentative must have slipped in.

Q. Tentative slipped in; I think you stated that you were contacted secretly by the bank official to find out what you could have for quick liquidation of Mr. Forster's interests, is that correct?

A. Mr. Forster had very heavy loans at the bank at that time.

Q. Now, this——

Mr. LeSourd: (Interposing) Let him finish.

The Witness: Let me finish, will you, please?

Mr. Obenour: Pardon.

A. (Continuing) As I remember, a statement was submitted showing $705,000. I might be wrong, —or $755,000, one or the other, of net worth. Attached to this, as I remember, was the statements of each of these firms; the Issaquah Creamery net worth, Apex Farms net worth, Finstad and Utgard net worth, Puyallup Creamery, Renton Ice and Ice Cream. This statement was made as a valuation of Mr. Forster's net worth in his [4614] enterprises. They showed only a cash balance of ninety-three thousand dollars, and they felt that in quick liquidation, that wouldn't go very far. The credit man was trying to analyze the cash position out of all these

(Testimony of L. Hicks Taylor.)
enterprises into a one cash position. He thought we should take all the companies and show all the cash in one lump sum, and all the accounts receivable, but Mr. Forster did not own all of these companies, so it was necessary to show them on a net worth basis.

The credit man apparently wanted to see what could be developed from a liquidation standpoint, so I took the various statements in conjunction with him, I believe. Maybe I went to my office and did it. I am not sure which. But, we developed how much cash we could obtain in, say, a period of fifteen days, determined that we could accomplish, by a cash position from accounts receivable, the recovery of $100,000.

So, we moved that into the cash position for anticipation. We reduced the accounts receivable by $100—$100,000—to show that they had been moved into an anticipation position.

We then took the statements of the various enterprises, analyzed their cash position, accounts receivable,—to determine how much cash could be [4615] immediately recovered. We anticipated $100,000 could be moved up into the cash position.

Mr. Forster not being the owner of all these companies, became a creditor to them if such a transaction were accomplished.

So, then, accounts payable were raised $100,000. In that calculation, the net worth remained the same. That was the purpose of this statement, in

(Testimony of L. Hicks Taylor.)

anticipation of how a loan of any size could be liquidated.

Mr. Obenour: Will the reporter read the question, please?

The Court: Mr. Reporter, read the question, please.

(Whereupon, the following was read by the reporter:)

"Q. I think you stated that you were contacted secretly by the bank official to find out what you could have for quick liquidation of Mr. Forster's interests, is that correct?"

A. (Continuing) I have so answered the question.

Q. (By Mr. Obenour): Thank you.

Did you make these adjustments in the presence of the bank official who secretly contacted you?

A. That I cannot say definitely. We discussed them.

Q. Where did you make these adjustments?

A. Probably worked them out in my office if all the work sheets were around, it would be very simple to trace them through.

Q. And the reason for this adjustment was because, would you say, this was a critical time for Mr. Forster?

A. No, it was not a critical time. It was just a survey of the bank to see what his readily liquidated position was.

It wasn't any reflection on Mr. Forster.

(Testimony of L. Hicks Taylor.)

Q. I see; it was because of the number of loans he had out?

A. He had quite a large loan at that time. I don't remember what it was.

Q. But what the bank was interested in, and the reason you were contacted, they wanted to know how much cash Mr. Forster had, is that correct?

A. How much quick cash could be developed.

Q. So then you started with a ninety-three thousand dollar figure?

A. That was the balance, as I remember it, that showed on the Alpine Dairy bank account. [4617]

Q. Handing you Exhibit 272, what is the total of the cash in the bank as of February 28, 1948?

A. Apparently there is some other adjustment made to the account there. It only showed 19,000 in the two accounts.

Q. Where is your——

A. (Interposing) February.

Q. February 28th, $26,725.65 for February 28th?

A. Yes; I was looking at the loan figure there. I even tripped myself up. The balance of cash on hand in the ledger shows $93,848.11, identical to the figure that shows on this statement of Exhibit 252.

Q. With the exception that the 252, "2" raised the $93,000 figure to $293,000 cash?

A. Correct.

Q. Now, you stated that Mr. Forster was attempting to borrow some money to build Alpine Ice Cream plant; was that true?

(Testimony of L. Hicks Taylor.)

A. Well, it was my recollection that that was about the time.

Q. And how much was the loan that they wanted to make?

A. Well, if I remember correctly, two hundred thousand dollars was the request.

Q. Two hundred thousand; and how much did he finally make? [4618]

A. Well, he didn't make any at the time.

Q. He didn't make any at the time?

A. As I remember it.

Q. So, he wanted to make this loan, and in accordance with this request for the loan, you prepared this figure of $293,000—$293,000 which was submitted to the bank?

A. Well, I don't believe that this had any particular connection with the two hundred thousand dollars, only just information that the credit man wanted.

Q. Was that the purpose of the statement?

A. Well, not what I have prepared here. This was after the request. This was another.

As I remember it, it was later.

Q. Why was that exhibit submitted to the bank?

A. As I have stated.

Q. Then it was submitted as a result of the request for a loan that Mr. Forster was attempting to get?

A. Oh, yes; you might say that it was the follow-up of that.

Q. And the one thing that they were concerned

(Testimony of L. Hicks Taylor.)

with was cash on quick liquidation of Mr. Forster's interests? [4619] A. Yes.

Q. Now, that was the first time in any of these statements to the Peoples Bank that you had to make a showing of cash, is that correct?

A. Yes, and I believe the only time, if I remember.

Q. The only time; and all the other times in these financial statements from 1941 on through 1950, you simply showed the book value of cash of Alpine Dairy, is that correct?

A. That is my recollection, yes.

Q. So that is the only account you showed?

A. As I remember.

Q. And the one instance, then, that the bank demanded a figure for cash on quick liquidation was this time on February, 1948, when you showed $293,000?

A. It was the only time that I ever contacted the credit department separately, as I remember.

Q. Did they contact you, or did you contact them? A. They 'phoned me.

Q. Did Mr. Forster understand what you were doing with this $293,000 figure?

A. Well, I presume that he did. I think that I went over it with him. [4620]

Q. And Exhibit 123, is that the typewritten copy of Exhibit 252?

A. Yes, I believe it is.

Q. Now, they are exactly the same, the cash figure is 293? A. Yes.

(Testimony of L. Hicks Taylor.)

Q. And the 293,000 figure was discussed with Mr. Forster?

A. It is my recollection that it was.

Q. Did he understand what the bank was concerned with was cash?

Mr. Griffin: I object.

The Court: Mr. Obenour, I don't think you should ask in these questions, "Did Mr. Forster understand?"

Mr. Obenour: I will rephrase them. I am sorry.

Q. (By Mr. Obenour continuing): Did Mr. Forster give any indication that he questioned the figure 293—293,000?

A. No, I don't believe so.

Q. Did you ask Mr. Forster at this time how much cash he had?

A. Well, this was taken from the various statements that show on this return.

Q. The various statements?

A. Yes, from Issaquah Creamery, Apex Farms, to [4621] arrive at a figure.

Q. The problem that the bank was interested in was how much cash Mr. Forster had, wasn't it?

A. A credit man—I will say "yes" to the question, for liquidation purposes, but I would like to say this: a credit man has a different viewpoint of what a financial statement is than the average person, and to satisfy the thinking, this statement was drawn up.

Q. Is a credit man interested in cash in savings account?

(Testimony of L. Hicks Taylor.)

A. I don't know about that, what they do. This credit man was interested in the loans of Mr. Forster.

Q. But he was interested in cash, wasn't he, and the cash in the savings account at the bank is cash?

A. Yes.

Q. Yes; and did you ask Mr. Forster how much cash he had in the savings account?

A. I did not.

Q. At the time? A. No.

Q. You knew that the bank was interested in cash?

A. This was not anything to do with anything but [4622] the statement that I presented to the bank including the various companies that Mr. Forster was interested in.

Q. And you reached the figure $293,000 by your estimate of quick liquidation of accounts receivable of Alpine Dairy for $100,000 which reduced Alpine's account $100,000 and moved $100,000 into cash, is that it?

A. Yes, that is correct.

Q. And you calculated what your estimate would be of the cash you could raise similarly in the other companies in which Mr. Forster had an interest, and reached another $100,000?

A. Yes.

Q. And the net result showed a figure of $293,000 cash for financial statement you submitted to the bank in February, 1948?

A. That is correct.

(Testimony of L. Hicks Taylor.)

Q. Did you explain these adjustments to the bank officials at the time you submitted this exhibit, 123?

Mr. LeSourd: If your Honor please, we have gone over and over this.

The Court: I think the last question as to explanation is not repetitious. The rest has been gone over many times. [4623]

A. Exhibit 123 was, as far as I know, handed to Mr. Strack and Mr. Donaldson, and signed by Mr. Hans Forster.

Mr. Obenour: I will ask that the question be read, and the witness instructed to answer, if the Court please.

The Court: I won't read the question. I think it was long, but I will ask the question:

The question was, did you explain this procedure you went through to anyone in the bank?

The Witness: It is my recollection that I did to both of the officers, yes.

Q. (By Mr. Obenour): So that this is another adjusted statement then that you prepared to give to the bank in order for Mr. Forster to receive a loan?

A. Mr. Forster did not receive a loan on the strength of this statement.

Q. But he did receive a loan, he did receive a loan?

A. I have no evidence of it, no.

Q. Handing you Plaintiff's Exhibit 98 which has been identified as the liability ledger, Hans

(Testimony of L. Hicks Taylor.)

Forster, Issaquah, Washington, to the Peoples National Bank, and what is the liabilities of Mr. Forster in [4624] February, 1948?

A. I don't see anything here, February, 1948.

Q. Then Peoples Bank did not have any loans out to Mr. Forster as to that personal unsecured loans as of the date February 28, 1948, is that correct?

There is no record of the loan from Peoples Bank to Mr. Forster of any amount as of the date February 28, 1948?

A. I don't see anything on here.

Q. Handing you Plaintiff's Exhibit 100, which is the liability ledger, direct, secured, for Alpine Dairy, and ask you if there is a record of any loans from Peoples Bank to Mr. Forster, February 28, 1948? A. No.

Q. Handing you Exhibit 101, direct unsecured for Alpine Ice Cream Company, and ask if there is a loan on February 28, 1948?

A. No. Do you have any other loan records of companies Mr. Forster is interested in?

Q. We do not.

A. Then you had better get the balance.

Q. It was personal loans we were discussing of Mr. Forster.

A. Mr. Forster was endorser on a number of loans. It takes a complete record to answer the question you are [4625] presenting.

Q. Peoples Bank wanted to know about cash. Did they discuss with you the accounts that Mr.

(Testimony of L. Hicks Taylor.)

Forster personally had in the Peoples Bank as of February 28, 1948?

A. Personal accounts?

Q. Yes.

A. What are you referring to?

Q. His personal savings account that he had at the Peoples Bank. A. No, he did not.

Q. Now, that would be information that the Peoples Bank should have, wouldn't it?

A. They could have it; they should have it.

Q. Did they discuss with you the Alpine Bank account in the bank at that time?

A. I don't know if it went into such minute detail.

Q. They were—you were discussing cash?

A. Most assuredly.

Q. How about the account for Alpine Ice Cream that the Peoples Bank had at that time; did you discuss that account?

A. The Alpine Ice Cream—Alpine Ice Cream account?

Q. Yes. [4626]

A. You have no record of any Alpine Ice Cream account in this set-up.

Q. So, when you were discussing cash with the bank officials, there was no discussion of bank accounts but simply a statement that raises an account, showing over ninety-three thousand dollars, two hundred thousand dollars by this adjustment; is that the final testimony you are making?

(Testimony of L. Hicks Taylor.)

A. Yes, this is an anticipation statement, is what it is.

Q. Do you know whether or not Mr. Forster had $293,000 in cash?

Mr. LeSourd: Object to that, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): Did you know whether or not—did you testify, I believe, that possibly he might have had it?

Mr. LeSourd: Object to that.

The Court: Are you speaking now of this statement?

Mr. Obenour: Yes, sir, the item "cash". He testified on direct, I believe, if the Court please, that he possibly could have had it, but didn't know if he did. [4627]

The Court: I will sustain the objection.

Q. (By Mr. Obenour continuing): Was that item to your knowledge of $293,000 true?

A. No, it was an estimate.

Q. It was an estimate?

A. The ninety-three thousand appeared on our books. The two hundred thousand dollars, as I have explained, was an estimate.

Q. Were you making a false statement to the bank?

A. Mr. Obenour, that was not the purpose of this statement in any way, shape or form.

Q. I hand you Plaintiff's Exhibit 55, which is a savings record of Hans and Evelyn Forster, savings account 198, and would you turn to the entry there

(Testimony of L. Hicks Taylor.)

of February 28, 1948, and read what is the amount of cash on deposit at that time? I believe the next entry would be 3-3-48 where an addition was made.

A. That is about $118,000 in this.

Q. Would you please write down that figure $118,496.32? A. Yes.

Q. And, handing you Plaintiff's Exhibit 89 for the entry as of February 3, 1948, what is that figure? [4628]

Mr. Patten: What is that?

Mr. Obenour: A record of the Peoples National Bank, savings account of Hans Forster.

A. It is $60,687.68.

Mr. Obenour: May I ask that this be marked please?

The Clerk: Plaintiff's Exhibit 289 marked for identification.

(Plaintiff's Exhibit 289 marked for identification.)

Mr. Obenour: I just asked that this be identified first, if the Court please.

Q. (By Mr. Obenour): Can you identify that, Mr. Taylor, Exhibit 289, please?

A. Well, this purports to be the Alpine Ice Cream Company bank statement.

Q. Certified true copy by Mr. Hansen of that bank? A. It could be, yes.

Mr. Obenour: We would offer it, if the Court please.

Mr. LeSourd: I have a question.

Mr. Taylor, have you ever seen this before?

(Testimony of L. Hicks Taylor.)

The Witness: That is the first time I have [4629] ever seen the statement of any kind.

Mr. LeSourd: We object to it as not certified, your Honor, and also irrelevant and immaterial and beyond the scope of the direct examination.

Mr. Obenour: We would ask it be admitted without necessity of calling the proper witnesses to have it properly introduced, if the Court please.

The Court: I assume that is your desire.

Mr. Obenour: Yes, sir.

The Court: If there is objection, the Court will sustain the objection.

Mr. Obenour: Very well.

The Court: We will take a recess.

Members of the Jury: the Court advises you, or calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion.

(Whereupon, the July retired from the courtroom.)

(Whereupon, at 11:03 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:16 o'clock a.m. April 23, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury. [4630]

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

(Testimony of L. Hicks Taylor.)

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Obenour.

Mr. Obenour: Yes, sir.

Would you stipulate, Mr. LeSourd, as to the amount on deposit on March 1, 1948, for Alpine Ice Cream to be $19,956.91?

Mr. LeSourd: Yes, I will stipulate that that is true, but also object that it is completely irrelevant in any way to this matter, beyond the scope of direct examination and certainly no indication here that this witness knew anything about it.

The Court: As I understand, you would stipulate that that is the amount but if the matter is used in a question, you would object to the materiality of the question, is that it?

Mr. LeSourd: Yes, on Counsel's statement that this is taken from the bank as a true statement of what the account was.

The Court: The stipulation may show, and the objection [4631] may show to the materiality and relevancy of the issue and the Court would overrule that objection.

Mr. LeSourd: Thank you.

Mr. Obenour: Thank you, Mr. LeSourd.

Mr. Moriarty: What was the amount?

Mr. Obenour: $19,956.91.

Q. (By Mr. Obenour): Would you add $19,-956.91, please, to those other two figures?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. This was the Alpine Ice Cream account and the Alpine Ice Cream Company was owned outright by Mr. Forster, is that correct?

A. It must be.

Q. Would you add——

A. (Interposing) I have them added, $199,-141.91.

Q. That is within $659 of the $200,000 adjustment to cash you made to the financial statement you made to the bank in February, 1948, is that correct? A. It is not.

Q. What is the amount?

A. I have explained this about five times.

Q. Pardon me.

A. You are asking me about 191. All right. Let's [4632] apply it. You have got a net worth of $755,000.

Let's add 199. That would give you a net worth of $955,000.

Mr. Obenour: I ask that the question be read, if the Court please.

The Court: Mr. Reporter, read the question.

(Whereupon, the following was read by the reporter:)

"What is the amount?"

Mr. Obenour: The prior question.

The Court: The prior question, Mr. Reporter.

(Whereupon, the following was read by the reporter:)

"Q. That is within $659 of the $200,000 adjust-

(Testimony of L. Hicks Taylor.)

ment to cash you made to the financial statement you made to the bank in February, 1948, is that correct?" A. No.

The Court: What amount?

Mr. Obenour: The difference between the figures he added and the $200,000 adjustment.

Mr. LeSourd: I will object to that, your Honor, as assuming that these figures have anything to do with the adjustment.

The Court: It is a matter of calculation. [4633] The Court will sustain the objection.

Q. (By Mr. Obenour): Your figure then of $199,300——

A. (Interposing) $199,141.91 taken from these exhibits here.

Q. And then to that would you add $93,848.11 which you stated and testified earlier was on the Alpine books for cash and cash in banks as of that date. A. You want that total?

Q. Please. A. $292,990.02.

Q. Now, in fact, Mr. Forster had bank accounts totalling $292,000 as of the date of February 28, 1948; that is, accounts of his own, is that not correct?

A. That is what these schedules show, yes.

Q. But the figure of $293,000, you say, you explained to the bank was merely reached by adjustments of quick liquidation?

A. That is correct.

Q. So that when you were discussing cash of Mr. Forster for the purpose of making a loan you

(Testimony of L. Hicks Taylor.)

explained the cash by an adjustment and never revealed the fact to the bank that he actually had $292,000 cash, is that correct? [4634]

Mr. LeSourd: Object to the question, your Honor, as indicating—assuming that this witness knew about these bank accounts.

The Court: Objection sustained.

Q. (By Mr. Obenour): At the time this $293,000 figure was given to the bank, you explained it as being adjustments and to your knowledge the bank was never advised that in fact Mr. Forster had that amount in cash, is that correct?

A. I do not know.

Q. What is the amount of cash shown on the statement of September, 1945, Exhibit 125, please?

A. September, 1945——

Mr. LeSourd: (Interposing) Are you speaking of cash of Alpine Dairy?

Mr. Obenour: Cash shown on financial statement given to Peoples National Bank, September, 1945.

A. (Continuing) There are two figures, one marked "cash" and one marked "bank."

Q. (By Mr. Obenour): What are the totals?

A. It would be $50,157.09.

Q. And that shows an increase of $240,000, approximately, of cash and cash in banks in a year and a half? [4635]

Mr. LeSourd: Object to the question, your Honor, as assuming there is any relationship between these two figures.

(Testimony of L. Hicks Taylor.)

The Court: The Court will sustain the objection.

Mr. LeSourd: Thank you.

Q. (By Mr. Obenour continuing): During this period, I believe you testified, Mr. Taylor, that Mr. Forster was drawing only $18,000 a year from 1945 to 1949?

A. Yes, that is my recollection.

Q. Isn't it true, Mr. Taylor, that at no time did you or Mr. Forster give a statement, oral or written, to any bank official that showed that in fact, Mr. Forster had any accumulation of cash as in fact he had from that account of $292,000?

Mr. Griffin: May that question be read, your Honor?

The Court: Mr. Reporter, read the question, please.

(Whereupon, preceding question was read by the reporter.)

Mr. LeSourd: I will object to that, your Honor, as calling for a statement by this witness as to [4636] what Mr. Forster did.

Mr. Obenour: To his knowledge.

Mr. LeSourd: To his knowledge, I have no objection.

A. I have no knowledge of it.

Q. (By Mr. Obenour): Isn't it a fact, Mr. Taylor, that in all these years, you gave no statement to anyone that would show the true accumulation of cash of Mr. Forster in his savings accounts because his accumulation of cash, such as this, so far as in

(Testimony of L. Hicks Taylor.)

excess of his salary, was one thing you could not explain in an income tax prosecution?

Mr. LeSourd: Objection, your Honor.

The Court: Objection sustained.

Q. (By Mr. Obenour): I believe, is it not true, Mr. Taylor, that an accumulation of cash in excess of the total salary drawn as indicated on a tax return could not be explained to the Internal Revenue Bureau?

Mr. LeSourd: Objected to as argumentative and hypothetical. I object to the form of the question.

The Court: Objection sustained. [4637]

Q. (By Mr. Obenour): Now, besides these amended financial statements, I believe you have indicated there were some altered records of the other corporations. Is that true, Mr. Taylor?

Mr. Obenour: Can I have A-44 and 212?

Mr. LeSourd: Object to that.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. LeSourd: Object to that as assuming that the testimony is as to altered records.

Mr. Obenour: There has been testimony, your Honor.

The Court: Pardon?

Mr. Obenour: There has been testimony of altered records in the examination by Mr. Griffin.

The Court: The Court will sustain the objection.

(Testimony of L. Hicks Taylor.)

Mr. Obenour: Can I have 212, 212-A and A-31, A-44.

212, 212-A, A-31.

(Whereupon, exhibits were handed to Mr. Obenour by the Clerk.)

Q. (By Mr. Obenour): Handing you Exhibit A-41, which has been [4638] identified as the statements given to you by Mrs. Simonson of Finstad and Utgard in monthly statements, it is my understanding that you testified under examination of Mr. Griffin, that in December, 1947, accounts payable were raised $10,000; is that correct?

Mr. LeSourd: If your Honor please, may it be understood that our continuing objection goes to this matter as beyond the scope of direct and irrelevant and immaterial?

The Court: Objection may show. Objection overruled. Do you have the question in mind, Mr. Taylor?

The Witness: Yes.

A. The accounts payable were increased to cover some bonus that they owed, yes.

Q. (By Mr. Obenour): Mr. Egeness did that, is that correct? A. Yes.

Q. Now, inventory was changed at the same time, December, 1947; did Mr. Egeness do that?

A. Yes.

Q. And the inventory in 1946, and 1948, was changed; did Mr. Egeness do that, too?

A. Yes.

Q. Did you discuss these alterations of the fig-

(Testimony of L. Hicks Taylor.)

ures given to you by Mr. Egeness with Mr. Forster? [4639]

Mr. LeSourd: Object to the characterization "alterations."

The Court: Haven't you used the word "changed"?

Q. (By Mr. Obenour continuing): Did you discuss the changes made by Mr. Egeness with Mr. Forster?

A. You mean, did I do it personally?

Q. Did you discuss with Mr. Forster the changes made by Mr. Egeness?

A. It is my recollection that when these figures were given to me, Mr. Egeness and Mr. Forster and I were together.

Q. So that Mr. Forster knew at the same time that you did, that these figures had been changed by Mr. Egeness?

Mr. Griffin: Object to the form.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): But he was present, is that your recollection?

A. He was present.

Q. Handing you 212 and 212-A, the books maintained by Mr. Schneider at Renton, it is my understanding of your testimony there that those changes made in the [4640] accounts payable for July, 1946, were made by Mr. Schneider; is that correct?

Mr. LeSourd: I object to that as assuming evidence not in issue. The testimony was that he didn't know who made the changes.

(Testimony of L. Hicks Taylor.)

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): There are changes in the accounts payable for July, 1946, in the accounts payable book of Renton Ice and Ice Cream?

Mr. Griffin: I object to the question, and only for this reason, if the Court please:

In spite of our case in chief, and calling Mr. Schneider, they cross-examined the witness in their chief cross-examination, and I don't believe they need to reiterate it again.

The Court: Was this some item not covered in your cross-examination?

Mr. Obenour: No, sir, but it was covered by Mr. Griffin and Mr. Schneider was down there and said it was some figures Mr. Taylor gave him.

The Court: Without going into it again, if you are going to some matters——

Mr. Obenour: (Interposing) Yes, sir.

The Court: (Continuing) ——that you think [4641] pertains to matters brought out by Mr. Griffin, the Court will overrule the objection.

What is the pending question?

Mr. Griffin: I may suggest, your Honor, again I don't mind the time, but I only cross-examined on the direct examination in regard to this witness, and the Government's case involving these particular books.

Mr. LeSourd: The matter has been covered twice now with this witness.

The Court: I am in agreement on that, but of

(Testimony of L. Hicks Taylor.)

course, I can't know what item might be sought by the Government on this cross-examination.

Mr. Griffin: All right; I will withdraw my objection that it has been covered.

The Court: If it is repetitious in any way, the Court will sustain the objection; or, do you have some matters that should be covered in the original cross? Now, do you wish to state the question, Mr. Obenour, or do you want the reporter to read it?

Mr. Obenour: May the reporter read it?

The Court: Mr. Reporter, read the question, please.

(Whereupon, preceding question was read by the reporter.) [4642]

Mr. LeSourd: Is that 1946, Mr. Obenour?

Mr. Obenour: Yes.

A. I don't see any.

Q. (By Mr. Obenour): Accounts payable were changed in July, 1947?

Mr. LeSourd: Well——

The Court: (Interposing) 1947, now?

Mr. Obenour: Yes, sir.

Mr. Griffin: The witness has testified, if the Court please, he is not familiar with that book, even.

Mr. Obenour: He testified, if the Court please, that certain figures were added to it by him.

The Court: He may answer.

A. I don't see any change.

Q. (By Mr. Obenour): You don't see any

(Testimony of L. Hicks Taylor.)

change; were the changes made in the inventory, Exhibit A-31?

Mr. LeSourd: What company are you talking about?

Q. (By Mr. Obenour continuing): Exhibit A-31, balance sheet of Issaquah Creamery; as I understand your testimony, the inventory was changed $10,000 by Mr. Erickson; is that correct? [4643]

Mr. LeSourd: Is this the end of 1948 you are talking about?

Mr. Obenour: Yes, sir; A-31.

Mr. LeSourd: Object as repetitious, fully covered.

Mr. Keesling: We object to his statement about Mr. Erickson.

The Court: The Jury will disregard the statement of Counsel if it is not in accord with your recollection in all instances where counsel may propose to state what he conceives to be the evidence.

Mr. LeSourd: Mr. Keesling's objection is well taken. That was not his testimony.

The Court: I will strike the testimony—I mean, the comment of counsel upon your request.

Mr. Keesling: I move to strike.

The Court: The comment of counsel will be stricken and the jury will disregard it.

Now, we will proceed.

Q. (By Mr. Obenour): It is my understanding, referring now to 212, that in this entry for July, 1947, that these 1's that were added in front of

(Testimony of L. Hicks Taylor.)

these nine figures were not done by you, is that correct? A. That is correct. [4644]

Q. And was it your testimony as to who did these changes of those 1's and put the final total down there?

The Court: You had better restate that question, Mr. Obenour.

Q. (By Mr. Obenour continuing): And, to your knowledge, do you know who put the 1's there?

A. I do not.

Q. To your knowledge, do you know whose writing is that who made the total at the bottom there?

A. It looks like Mr. Schneider's.

Q. And these——

The Court: "There," is that——

Mr. Obenour: (Interposing) Yes, sir; I am pointing to—referring to Exhibit 212 for the——

The Court: (Interposing) Are you pointing to the end?

Mr. Obenour: Yes, sir; the end of July accounts payable for the year 1947, of Exhibit 212.

Q. (By Mr. Obenour continuing): And now, referring to the end of the accounts payable for July, 1946, and these figures down here of $14,338, are those figures by you? Is that the correct testimony?

A. That is my figure, yes. [4645]

Q. And the changes from the eight thousand dollars figure to fourteen thousand was not done by you, is that your testimony?

A. That is right.

Mr. LeSourd: I will object. There is an eight

(Testimony of L. Hicks Taylor.)

thousand dollar figure total, and then some little pencil figure at the front of the month. I don't know what it is.

The Court: The Court will strike the question and answer.

Q. (By Mr. Obenour): Referring to A-31, what is the figure—it is my understanding that the inventory is lowered ten thousand dollars on the balance sheet from the figure supplied by Mr. Erickson; is that correct?

A. Mr. Obenour, will you give me the work sheet that goes with A-31, please?

Q. Is that your testimony? Is that your testimony on cross-examination?

Mr. LeSourd: Just a moment, Mr. Obenour. This matter was gone into, and the witness was given the work sheet and if you want him to go over it, I think you should give him the work sheet and go over it again.

The Court: What is the question, Mr. Reporter?

(Whereupon, preceding question in two parts was read by the reporter.)

Mr. Griffin: I don't see how he could answer that question.

The Court: I think you would have to reframe that, Mr. Obenour.

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour continuing): Was there a change in the figure of inventory that you used on the balance sheet from that supplied by Mr. Erickson? A. Yes, there was a change.

(Testimony of L. Hicks Taylor.)

Q. And who made the change?

A. Who made the change?

Q. Yes, sir.

A. Well, I changed it on the work papers, yes.

Q. Did you discuss this change with Mr. Forster?

A. Any changes that were made of that type were discussed with Mr. Forster.

Q. Did you discuss the changes on the Renton books with Mr. Forster?

Mr. LeSourd: I objection to that, your Honor. He testified he didn't know about any change in the Renton books. There is no changes shown.

The Court: It is assuming something not in evidence, Mr. Obenour. [4647]

Mr. Obenour: All right, sir. I will withdraw the question.

Q. (By Mr. Obenour): And, referring to the Stephenson check, which was—rather, the entry in the journal of the duplication of the Stephenson account payable in the amount of approximately eighteen thousand dollars, are you familiar with that? A. I am not.

Mr. LeSourd: Just a moment. I will object to this as improper cross-examination.

Mr. Keesling: I join in the objection.

Mr. LeSourd: Not something gone into.

Mr. Obenour: I believe Mr. Griffin went into it. The journal entry, rather than the check.

Mr. Griffin: I never mentioned that either in the cross-examination.

(Testimony of L. Hicks Taylor.)

The Court: If you have the journal entry as an exhibit to which you can refer to——

Mr. Obenour: (Interposing) Yes, sir.

The Court: (Continuing) ——you might refer to it.

Mr. Obenour: 272, please. [4648]

Q. (By Mr. Obenour): Do you have the accounts payable portion, the accounts payable entry for December, 1949, for Issaquah Creamery?

Mr. LeSourd: This is Mr. Erickson's journal we are looking at, Mr. Obenour.

Mr. Obenour: 272.

Mr. Keesling: That is not it?

Mr. Obenour: Is that the wrong exhibit number? I am sorry.

Mr. LeSourd: You have it confused.

Mr. Obenour: 213.

(Whereupon, document was handed to the witness by Mr. Obenour.)

Q. (By Mr. Obenour): Will you find the entry for December, 1949? A. What is the entry?

Q. Accounts payable.

Mr. Keesling: May I inquire as to what item?

Mr. Obenour: Accounts payable, the entry of Stephenson.

Mr. Keesling: That is completely beyond the cross-examination.

The Court: I don't recall it, Mr. Obenour.

Mr. Obenour: I might be in error. It is my recollection it was asked. [4649]

Mr. Griffin: If the Court please, I advise your

(Testimony of L. Hicks Taylor.)

Honor I would go over my notes at night and continue into cross-examination. I did have at least a day's cross-examination, and this is one of the items I eliminated and never mentioned.

The Court: I have no memory of it.

Mr. Obenour: I am sorry. I will withdraw the reference.

Q. (By Mr. Obenour): This was an item of fifty-one thousand dollars that was changed in your work sheet for accounts payable in December, 1949; was that not correct? A. Yes.

Q. And who made the original change and gave it to you?

Mr. LeSourd: If your Honor please, we have been over this several times. Mr. Obenour was on the original cross-examination. I have no objection to going over it again, except it takes time, and it is repetitious.

The Court: Again, it has been gone over many times, and if the Government has some particular point they wish to bring out, as a result of the cross-examination of Mr. Griffin, it would be proper.

I am at a loss to know what it is, but you [4650] may proceed.

A. I answered it "yes."

Q. (By Mr. Obenour): And who made the change originally that gave the information to you?

A. The information was given to me by Mr. Erickson.

Q. Did he also give you the information about the milk drafts and inventory figures?

(Testimony of L. Hicks Taylor.)

A. Correct.

Q. And you stated that you changed your ledger because Mr. Forster had said that the profit was too high, and that you had left them with your statement that if they found any errors in their books, you would correct your ledger; is that correct? A. That is correct.

Q. Now, you said you knew nothing wrong about these corrections at the time that you made them, the fifty-one thousand dollars accounts payable and milk draft and inventory changes?

A. Yes, that is correct.

Q. That you yourself found that there was fifty thousand dollars wrong in April, did you not, Mr. Taylor?

A. You are referring to the minus inventory, I [4651] presume.

Q. Yes, sir.

Mr. Obenour: Exhibit A-51, please, and A-120.

Q. (By Mr. Obenour continuing): You did find something wrong in April, the fifty thousand dollars, according to your testimony, is that correct?

A. I didn't say I found something wrong. I thought there might be something wrong.

Q. But you thought there was something wrong enough to make an adjustment of fifty thousand dollars, did you not?

A. I made a suggested change to call it to the attention of all interested.

Q. You did call it to the attention that something was wrong; did you ever find anything wrong

(Testimony of L. Hicks Taylor.)

in the amount of fifty thousand dollars in the books of Issaquah Creamery as of the first four months of 1949. A. I did not check.

Q. You did not check; so that the adjustment that you made, contrary to the showing of what was made on your books, was done strictly because you thought something was wrong?

A. That is right, and it had absolutely nothing [4652] to do with income tax in any way, shape or form.

Q. And the minus inventory was your figure?

A. It was a calculation I made, yes.

Q. Did you ever receive a minus inventory figure from Mr. Erickson? A. It is possible.

Q. Handing you Exhibit A-120, whose handwriting is this slip of Issaquah Creamery, with the inventory and the figures?

Mr. LeSourd: I object, your Honor. The exhibit is not in evidence.

Mr. Obenour: I am asking for identification, if the Court please, and we would again offer it.

Mr. Griffin: I had it identified, but did not offer it, if the Court please, as I recall.

The Court: Was it used at all?

Mr. Griffin: It wasn't used at all.

Mr. Keesling: It wasn't offered at all, your Honor. It is a 1950 item.

Mr. Obenour: March, 1950.

The Court: It is an item on March figures?

Mr. Obenour: Yes.

The Court: Objection sustained. They are not

(Testimony of L. Hicks Taylor.)

figures involved here, and I think one offer was made of a similar document. [4653]

Mr. Griffin: That is the reason I didn't offer this, because you sustained other similar objection.

Q. (By Mr. Obenour): Did you ever—you say you have never examined the books of Issaquah Creamery to support the final adjustment you made at the end of 1949?

A. I don't recollect ever looking at them.

Q. So that there have been no—you have never found the errors for either your fifty thousand dollar adjustment or the final adjustment of fifty-one thousand—sixty-one thousand dollars made at the end of the year?

A. Fifty-one thousand adjustment was made at the end of the year.

Q. So that you have never found any errors to substantiate that?

A. I have made no check of it, no.

Q. Of all these adjustments by Mr. Egeness, Mr. Erickson and Mr. Schneider, Mr. Forster was the only man who benefited from all of them; is that correct?

Mr. Griffin: Just a moment. May I hear that question read?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.) [4654]

Mr. Griffin: I object to the form.

The Court: Objection sustained.

(Testimony of L. Hicks Taylor.)

Q. (By Mr. Obenour): Did Mr. Forster benefit from the——

Mr. Griffin: (Interposing) I object to the form of that question. If this is a benefit, it is something new.

The Court: The Court will sustain the other objection.

This question isn't completed, but if it is asking this question as it was sustained as to benefit, the Court would sustain an objection to questions of that character.

Q. (By Mr. Obenour): Mr. Forster received additional income as a result of the changes made by Mr. Egeness at Finstad and Utgard, didn't he?

Mr. Griffin: We will object to the form of that question. There could be neither additional nor less income.

The Court: Well, I would overrule the objection.

Mr. LeSourd: It is a separate corporation.

The Witness: May I hear that? [4655]

The Court: Mr. Obenour, is this made as to other companies?

Mr. Obenour: Yes, sir; Finstad and Utgard. Finstad and Utgard, we have just discussed these alterations or changes, if the Court please.

The Court: Will you restate the question, Mr. Obenour?

Q. (By Mr. Obenour continuing): Mr. Forster owned Finstad and Utgard at the time the changes were made, is that not true? Changes made by Mr. Egeness that was just referred to?

(Testimony of L. Hicks Taylor.)

A. Yes, he owned it.

Q. And did he receive additional income as a result of this change? A. The corporation.

Q. The corporation owned by Mr. Forster did receive additional income?

A. The corporation did, yes.

Q. And Mr. Forster received additional income as a result of the changes in the accounts payable by someone at Renton Ice and Ice Cream, is that not correct?

Mr. LeSourd: If the Court please, may our standing objection be considered to going to all of this? [4656]

Mr. Griffin: My objection is specific as to this question. Factually, it is not true, in the first place.

In the second,——

The Court: (Interposing) I think this question is beyond the scope of the cross-examination at this time.

The Court will sustain the objection.

Q. (By Mr. Obenour continuing): Isn't it true that Mr. Forster's name does not appear on a single income tax form in any way on any company of which he had an interest with exception of Issaquah Creamery and his own personal tax return?

Mr. LeSourd: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Mr. Obenour: No further questions.

Mr. LeSourd: If there is further cross, I would

(Testimony of L. Hicks Taylor.)

like to have it be completed before our redirect, your Honor.

The Court: Mr. Griffin, this will go to the matters covered by Mr. Keesling and Mr. Obenour.

Mr. Griffin: Yes, your Honor, and on one item.

Recross Examination

Q. (By Mr. Griffin): Mr. Taylor, I understood your testimony to be and I believe you stated—you stated about seven times—with reference to Exhibit 252, financial statement of February 28, 1948, that the cash on hand and in banks of $293,848.11 was made up, as you testified, of $93,848.11 shown as cash in the books of Alpine Dairy and the other two hundred thousand dollars was formulated on your analysis of the quick assets, is that it?

Mr. LeSourd: Objected to, your Honor, as improper recross. He went into it on his own cross-examination.

Mr. Griffin: This is preliminary to my question.

The Court: Objection overruled if it is a preliminary question.

Q. (By Mr. Griffin continuing): That is correct, is it not? A. Yes.

Q. Mr. Taylor, I will ask you if on May 5, 1948, you did not confer with the Peoples National Bank with Mr. Quinten H. Ellis, the credit manager, in connection with this statement of February 28, [4658] Exhibit 252, or a duplicate thereof.

Mr. LeSourd: Same objection, your Honor; also irrelevant and immaterial.

(Testimony of L. Hicks Taylor.)

The Court: Objection overruled.

A. I don't exactly remember, no.

Q. (By Mr. Griffin): I will ask you if it was not—if that is not the occasion to which you have testified you were secretly called to confer with the credit manager of the Peoples National Bank?

Mr. LeSourd: Objected to, your Honor. He says he doesn't remember the person.

The Court: Objection overruled.

A. I am afraid in saying secretly that I was a little bit strong. It wasn't secretly. They just phoned me. I didn't mean to make it appear that it was so secret, but I don't know, I do not remember whether it was Mr. Ellis or not.

Q. (By Mr. Griffin): I will ask you if on May 5, 1948, at the Peoples National Bank in your explanation of the assets shown on the statement of February 28, 1948, you did not state to Mr. Ellis in sustance and effect that the cash on hand and in banks of 293 thousand dollars, of $293,848.11, was in part Alpine Dairy [4659] operation and the remainder personal cash of Hans Forster?

A. No, I have no recollection of it.

Q. Would you say that you did not so state on that occasion on that date the substance of that question and answer to Mr. Ellis?

A. I would say that I did not say that.

Q. Mr. Taylor, on February 12, 1948, the date of that statement you had a conference at the Peoples National Bank with Phillip A. Strack, didn't you?

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: Objected to.

A. I don't remember.

Mr. LeSourd: Just a moment, Mr. Taylor. Objected to as containing an improper statement. February 12th was not the date.

The Court: Is that the date of the statement?

Mr. Griffin: No, the date of a meeting. I am asking with reference to the statement of February 28th.

Q. (By Mr. Griffin): I ask you——

Mr. LeSourd: Just a moment.

Mr. Griffin: I will withdraw that question and reframe it. [4660]

Q. (By Mr. Griffin continuing): I will ask you if in February 1948 you did not have a conference at the Peoples National Bank with Phillip A. Strack involving the matter of borrowing—that is, Hans Forster borrowing—two hundred thousand dollars for the construction, estimated cost and partial construction, of the Alpine Ice Cream plant?

A. When you read the balance of it I do recollect a discussion of two hundred thousand dollars to build an ice cream plant.

Q. That was in February, 1948, wasn't it?

A. The date I do not remember.

Q. And the purpose of Exhibit 252, February 28. 1948, was to give the bank a true financial statement of Mr. Forster's position in connection with the contemplated two hundred thousand dollar loan, wasn't it?

A. I will say it is possible. The intent was to

(Testimony of L. Hicks Taylor.)

give Mr. Forster's operations, the various companies he was connected with.

Q. I will ask you if, in a conference at said time with Phillip A. Strack, at Peoples National Bank, you did not advise Mr. Strack that one hundred [4661] thousand dollars of this 293 thousand dollars was on deposit by Mr. Forster in the Washington State Bank, Issaquah, Washington?

Mr. LeSourd: I object, your Honor. It is a completely improper question. In the first place he testified that the conference with Strack was in February before this statement was prepared; the conference later on was with Ellis. Counsel is attempting to confuse this thing into one over all conference.

Mr. Griffin: I am asking strictly an impeaching question, if the Court please.

Mr. LeSourd: All right; let's fix the date and who was present. I object otherwise.

The Court: Well, the general objection will be overruled. As to time and pleace, it is fixed now in February.

Mr. Griffin: February, 1948, Peoples National Bank.

Mr. LeSourd: What date in February?

Mr. Griffin: I can come no closer than that, than the date of the conference with Mr. Phillip A. Strack.

The Court: February, 1948?

Mr. Griffin: February, 1948, yes, your [4662] Honor.

Mr. LeSourd: What was the question?

(Testimony of L. Hicks Taylor.)

Mr. Griffin: The question is whether, at a meeting in February, 1948, Phillip A. Strack, Peoples National Bank, Mr. Taylor did not advise Mr. Strack that Mr. Forster had on deposit in the Washington State Bank, Issaquah, approximately one hundred thousand dollars.

A. No, I did not advise him.

Mr. LeSourd: Just a moment, your Honor. I will move to strike both the question and answer. It is my recollection that Mr. Strack testified that he didn't know Mr. Taylor advised him, that he didn't know who advised him.

The Court: It is a foundation question?

Mr. Griffin: It is a foundation impeaching question.

Q. (By Mr. Griffin): Now——

The Court: Motion will be denied.

Q. (By Mr. Griffin continuing): Now, Mr. Taylor, in an endeavor to refresh your recollection I read you from Exhibit A-1 which are the notes of the—of Mr. Donaldson and Mr. Strack of the Peoples National [4663] Bank. This note is under date of February 12, 1948.

Following executive committee meeting of February 10, 1948, dealing with the application of a loan by Mr. Forster P.A.S. has had several discussions with Hans Forster and his accountant Hicks Taylor over financing of a new ice cream plant on their present property at 4058 Rainier Avenue.

Does that refresh your recollection of the conference with Mr. Strack?

(Testimony of L. Hicks Taylor.)

A. I was in probably one of five or six.

Mr. LeSourd: I will now renew my motion to strike the so-called impeaching question. He has now fixed the time and it is obviously prior to this statement of February 28th.

Mr. Griffin: I am afraid Counsel does not understand an impeaching question is asked because the impeaching witness will then be called. I am endeavoring to refresh recollection.

Mr. LeSourd: I would like to get a ruling.

The Court: Motion to strike will be denied.

Q. (By Mr. Griffin): You say "probably," Mr. Taylor. Have you any recollection of how many discussions in regard to this two hundred thousand dollar loan you had with either Mr. Strack or Mr. Donaldson? A. Yes.

Q. How many? A. Not to exceed one.

Q. One?

It is anticipated that the plant and equipment will cost approximately two hundred thousand dollars.

Does that refresh your recollection as to the application, or discussion?

A. The first discussion, yes.

Q. Well, you only had one, Mr. Taylor.

A. That is right. I said the first discussion.

Q. Well, the first discussion would be the last discussion too, wouldn't it?

A. So far as I am concerned.

Q. But when you said the first discussion just

(Testimony of L. Hicks Taylor.)

a moment ago you had in mind other discussions, didn't you? A. I did not.

Q. It is anticipated that the plant and [4665] equipment will cost approximately two hundred thousand dollars and while they originally asked for a maximum loan they have now agreed that they can get by with a mortgage loan of one hundred thousand dollars.

Does that refresh your recollection?

A. It does not.

Q. That you were in the conference that got the loan reduced?

A. I was not. I was not present at any one hundred thousand dollar loan discussion.

Q. We have been supplied with financial statements as of December 31, 1947, from Issaquah Creamery Company, Inc.

Did you supply those, Mr. Taylor?

A. If they have them I prepared them.

Q. Alpine Dairy. Did you supply those?

A. I prepared them.

Q. You said, "If they have them." Have you any doubt as to any statement by Phillip A. Strack, President of the Peoples National Bank, as to its truth?

Mr. LeSourd: Object to that question, your Honor.

The Court: Objection sustained. [4666]

Q. (By Mr. Griffin): Apex Farms, financial statement supplied? A. Yes.

No. 14656

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Court of Appeals
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HANS FORSTER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

(In Six Volumes)

VOLUME VI.

(Pages 2329 to 2790, inclusive)

Appeal from the United States District Court for the Western District of Washington, Northern Division

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(Testimony of L. Hicks Taylor.)

Q. Finstad and Utgard, financial statement supplied? A. Yes.

Q. Hans Forster has with the Washington State Bank, Issaquah, approximately one hundred thousand dollars on deposit.

Does that refresh your recollection, Mr. Taylor?

A. It refreshes it to the point that I was not there when it was discussed.

Q. And you didn't even know, did you?

A. I did not know that he had one hundred thousand dollars.

Q. No, sir, you were preparing financial statements for Mr. Forster and he was holding out one hundred thousand dollars on you when he was trying to get a loan, is that right?

A. I was preparing financial statements from the books I operated on and not from his personal savings account or any of his other operations outside of these businesses.

Q. So, Mr. Strack, Mr. Donaldson, and [4667] the credit manager of the Peoples National Bank with whom you had this discussion knew that Mr. Forster had one hundred thousand dollars in the Issaquah State Bank but you didn't know it?

A. They knew more than I did, absolutely.

Q. Did you advise the credit man with whom you talked—by the way, let's tie this down and withdraw that.

You talked only once to Mr. Strack about this financing of the Alpine Dairy Building?

A. Yes, that is correct.

(Testimony of L. Hicks Taylor.)

Q. You did not talk to Mr. Donaldson about it?

A. He was present as I remember.

Q. But you had only one conversation about it?

A. On that loan, yes, of two hundred thousand dollars.

Q. On any loan, Mr. Taylor.

A. I am speaking of two hundred thousand dollars.

Q. What loan was made, Mr. Taylor?

A. I don't know right at the present time.

Q. One hundred thousand dollar loan was made, wasn't it, Mr. Taylor?

A. It may have been. I wasn't present. [4668]

Q. So that we can definitely say that in connection with any loan, construction loan, the building of the Alpine Ice Cream plant, you had only one conversation with the officers of the bank, Peoples Bank, and that was the single conversation with Mr. Strack and Mr. Donaldson were each present?

A. That is correct.

Q. Now, at what you originally said was a secret call with a credit manager of the bank did you have more than one conversation with a credit manager of the bank involving your statement of February 28, 1948? A. I do not recall.

Q. So, if there was only one it might be then the gentleman might be Mr. Quinten H. Ellis, the credit manager, is that correct?

A. It could have been, possibly. I don't remember the party's name.

Q. And did you discuss with the party, whose

(Testimony of L. Hicks Taylor.)

name you do not remember, the amount of the proposed building loan? A. I do not remember.

Q. You had a very detailed discussion with that gentleman on or about May 5, 1948, of the assets of Hans Forster, didn't you? [4669]

A. Of his companies, yes.

Q. All of his companies?

A. All of his companies, yes.

Q. I will ask you if you did not advise Mr. Quinten H. Ellis in that conversation upon May 5, 1948, at the Peoples National Bank, that Finstad and Utgard was solely owned by Hans Forster?

Mr. LeSourd: I will object to this as improper recross, your Honor.

The Court: I am inclined to sustain the objection.

Mr. Griffin: I ask leave to reopen on cross for the purpose of asking this question and for impeachment in connection with the other impeaching question.

The Court: The Court—in connection with the conversation made with regard to the loan?

Mr. Griffin: Yes, this is in connection with the witness' testimony before in which he went into detail that Mr. Forster did not own all of Finstad and Utgard, and I may say——

Mr. LeSourd: (Interposing) Well——

Mr. Griffin: Just a moment now. I did try to comply with the suggestion made at the recess period to cut my cross-examination and this is [4670]

(Testimony of L. Hicks Taylor.)

an impeaching question that I would like to ask in connection with his testimony.

Mr. LeSourd: Your Honor, this is the first time I ever heard of impeaching someone on a legal conclusion over a very complicated transaction. It seems to me they have fully covered it and he testified a number of times that he showed Mr. Forster in these statements as the sole owner of Finstad and Utgard because he had a contract permitting him and authorizing him to buy all the stock of Finstad and Utgard but he hadn't completed that contract.

I object to the question on the grounds that it is not an impeaching question and not proper recross examination. I will object to reopening his cross for any such purpose.

The Court: I hesitate to be too restrictive about reopening but Mr. Griffin, we have gone so extensively into cross examination that I believe——

Mr. Griffin: I appreciate I cut mine by a day at least as to matters I thought might be material.

Q. (By Mr. Griffin): Mr. Taylor, you stated on examination a [4671] little bit ago that you explained the changes in Exhibit 252 to both officers of the Peoples National Bank.

Please, the name of those two officers to whom you explained those changes?

A. I said to the best of my recollection I did.

Q. The name of those two officers, please?

A. It would be Strack and Donaldson.

Q. When did you make that explanation of the change to them?

(Testimony of L. Hicks Taylor.)

A. I wouldn't remember. Sometime after I prepared it.

Q. Sometime after you prepared this financial statement of February 28, 1948? A. Yes.

Q. Well, the two hundred thousand dollar loan was under discussion then, wasn't it?

A. Before that, I believe, yes.

Q. And after that?

A. Not in my presence at any time.

Q. Well, you explained the changes, you said, to them after you made the statement, is that correct?

A. Well, when else would I make the explanation? [4672]

Q. The explanation you made was in connection with the loan, wasn't it?

A. It is possible it was.

Q. So that you had more than one conversation with them about the loan, didn't you?

A. No, I did not.

Mr. Griffin: That is all.

The Court: Is that the end of your recross?

Mr. Griffin: Yes, your Honor.

The Court: Ladies and Gentlemen of the Jury: We will now recess for the noon-day luncheon and the Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion.

We will now recess until one-forty-five.

(Whereupon, the Jury retired from the courtroom.)

(Testimony of L. Hicks Taylor.)

The Court: You may step down.

The Witness: Thank you.

(Witness leaves stand.)

The Court: Mr. Keesling, do you have any other questions?

Mr. Keesling: No. [4673]

The Court: Then, Mr. LeSourd, you will start on redirect?

Mr. LeSourd: Yes, I will, your Honor.

The Court: Court will recess until 1:45.

(Whereupon, at 12:17 o'clock, p.m., a recess was had until 1:45 o'clock, p.m. April 23, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the jury and all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Redirect Examination

Q. (By Mr. LeSourd): Mr. Taylor, you have Exhibit 252 there before you? A. No, sir.

Q. That is the February 28th.

A. This is 213. [4674]

(Testimony of L. Hicks Taylor.)

(Whereupon, exhibit was handed the witness by Mr. LeSourd.))

Q. Handing you Plaintiff's Exhibit 252, which is this Hans Forster financial statement of February 28, 1948, that you were discussing just before we adjourned at noon, I believe you testified that the cash item in that statement was made up by taking what could be readily liquidated from other assets and putting it up into cash, didn't you?

A. Yes, that is correct.

Q. Now, on cross-examination you were asked to total certain items of cash assertedly from personal savings accounts of Mr. Forster totalling, I believe, one hundred ninety-nine thousand, or one hundred ninety-one? A. Yes.

Q. Is any part of that cash in this figure for cash on this February 28th balance sheet to your recollection? A. No, it is not.

Q. Now, I am handing you Plaintiff's Exhibit 272 which is the Alpine Ledger, and I will ask you to read from that ledger the amount of accounts receivable of Alpine Dairy as of February 28, 1948?

A. $328,480.65. [4675]

Q. Now, will you read the accounts receivable for Alpine Dairy listed on Exhibit 252, this financial statement? A. $228,480.65.

Q. Which is $100,000 less and erases that one hundred thousand dollars put on that financial statement?

A. It was moved up into the cash column.

Q. Now, with that $100.000 as one item in that

(Testimony of L. Hicks Taylor.)

cash column, is it possible for the $199,000 of personal cash that you totalled for Mr. Obenour, I believe, to be in that cash column?

A. It is impossible.

Q. Now, also, Mr. Taylor, will you read me the net worth of Mr. Forster shown on this February 28th statement? A. $755,512.22.

Mr. LeSourd: I will ask that this be marked.

The Clerk: Defendants' Exhibit No. A-126 marked for identification.

(Defendants' Exhibit No. A-126 marked for identification.)

Q. (By Mr. LeSourd): Handing you Exhibit 126 for identification, can you state what that is?

A. This is a financial statement dated October 31, 1948, of Hans Forster.

Q. And by whom was it prepared?

A. By me.

Mr. LeSourd: I will offer Defendants' Exhibit A-126.

Mr. Maxwell: What was the date?

Mr. LeSourd: October 31, 1948.

Mr. Obenour: No objection.

Mr. Griffin: No objection.

The Court: Exhibit A-126 may be admitted.

Mr. Keesling, I am sorry.

Mr. Keesling: No, no objection.

(Defendants' Exhibit A-126 admitted in evidence.)

Q. (By Mr. LeSourd): Handing you Exhibit A-126, the Hans Forster financial statement of Oc-

(Testimony of L. Hicks Taylor.)

tober 31, 1948, will you give us the net worth as shown on that statement?

A. The net worth is $778,363.18.

Q. And, again, what was the net worth on 252, February 28, 1948? A. $755,512.22.

Q. In other words, an increase of about how much? A. $22,000. [4677]

Q. Between February and October?

A. Yes.

Q. Now, the October, 1948, statement shows how much for cash? A. $41,850.36.

Q. Can you tell us what that cash represented, or will you want to check a journal to do so?

A. The cash that appears on Exhibit 126 is composed of two items, cash on hand of $18,652.09, and a bank balance of $23,198.27, totalling $41,850.36, the identical amount shown on Defendants' Exhibit A-126.

Q. From where have you taken those two items, Mr. Taylor?

A. From the cash account of the Alpine Dairy, and the bank account of the Alpine Dairy ledger.

Q. Then this cash represents only the Alpine cash? A. That is correct.

Q. Now, in this statement of October, 1948, is there any place in this statement of any other items of cash? A. No, it is not set out separately.

Q. By that, you mean there is cash in some of the subsidiary companies that he owned?

A. Yes, that would be correct. [4678]

(Testimony of L. Hicks Taylor.)

Q. And how would those companies be shown on the balance sheet?

A. The subsidiary companies, Issaquah Creamery Company, is shown on a net worth basis.

Q. And the others likewise?

A. The others likewise.

Q. Now, is there in this October, 1948 balance sheet, any amount from Mr. Forster's savings accounts or personal accounts? A. There is not.

Q. And then—that is all—in other words, that October, 1948, statement includes only the assets from the businesses which you had contact with as accountant, is that right? A. That is correct.

Q. And the same is true of the February, 1948, statement? A. Yes, that is correct.

Q. With the changes that you have mentioned?

A. Yes, anticipations.

Mr. LeSourd: May I have A-122?

(Whereupon, exhibit was handed to Mr. LeSourd by the Clerk.)

Q. (By Mr. LeSourd): Mr. Taylor, do you recall during Mr. Griffin's cross-examination that he handed you for identification [4679] Defendants' Exhibit A-122 and I believe asked you if this was a statement of the 1947 bonus, milk bonus, paid to shippers of Finstad and Utgard?

A. Yes, I remember it.

Q. And do you recall you testified that you could not identify it? A. That is correct.

Q. And do you recall that that was in connection with examination made of you concerning a

(Testimony of L. Hicks Taylor.)

$10,000 increase in the bonus payments to milk shippers at Finstad and Utgard?

A. Yes, I remember it.

Q. And do you recall, Mr. Taylor, that Mr. Griffin, holding this document in his hand, and looking at it, asked you whether or not the bonus payments at the end of that year were actually only $500; do you remember that question?

A. Yes, I remember it.

Mr. LeSourd: Your Honor, I will offer Exhibit A-122 in evidence at this time, to show the actual bonus figure that was before Mr. Griffin at the time he asked that question.

Mr. Griffin: There is no objection.

I endeavored to have it entered, and you objected. [4680]

The Court: A-122?

Mr. Griffin: Yes, your Honor.

The Court: It may be admitted.

(Defendants' Exhibit A-122 admitted in evidence.)

Q. (By Mr. LeSourd): And what is the total bonus shown there, and for how many individual shippers?

A. There appears to be eight shippers listed here.

Q. And what is the total bonus shown on that document? A. $2,139.55.

Mr. LeSourd: Your Honor, I would like permission to circulate this among the Jury.

The Court: Can you proceed with the examina-

(Testimony of L. Hicks Taylor.)

tion while you do it? It might save time if you want to read it.

Mr. LeSourd: I would rather have them see it, your Honor.

(Whereupon, exhibit was circulated among the Jury.)

Mr. LeSourd: May I have A-64?

(Whereupon, exhibit was handed to Mr. LeSourd by the Clerk.) [4681]

Q. (By Mr. LeSourd): I might ask you, Mr. Taylor, one question while that is circulating.

Do you have any information at all about the number of milk shippers to Finstad and Utgard?

A. Well, not too clearly.

Q. Do you have any general information as to whether there were many or few?

A. It is my recollection there were a great many.

(Whereupon, there was a brief pause.)

Q. Now, Mr. Taylor, coming back again for a moment to the matter of these—of this February 28, 1948, statement, you testified, I believe, that to the best of your recollection, you had gone over that statement with Mr. Strack and Mr. Donaldson. Do you have any clear recollection of that conversation?

A. Not exactly in that particular statement, but it would seem that I did because of the fact that that statement was signed by Mr. Forster and I believe it was gone over with them, but to definitely state it is hard for me to do.

Q. That is the extent of your recollection?

(Testimony of L. Hicks Taylor.)

A. Yes.

Q. Now, also you stated, I believe, that you had had [4682] only one conversation in which the $200,000 loan figure was mentioned.

Did you have other conversations with regard to loans in different amounts, or with regard to matters where no loan figures were mentioned?

A. Well, my—I remember particularly the one time that we discussed the $200,000 loan, and I don't recollect discussing that particular loan again, although we may have.

When the discussion goes on, you discuss a lot of things sometimes, and I really wouldn't want to make the statement that it wasn't discussed again in some minor way.

Q. Did you have other meetings with the bank in this same general period?

A. Yes, we did, or I did, with Mr. Forster, but it was in conjunction with other statements.

Q. At any of these meetings, were smaller loans than $200,000 considered for this ice cream building, this building you were talking about?

A. I believe there was a discussion of a lesser loan, but I don't remember any amount being discussed. I think that was settled with Mr. Forster when I wasn't present.

Q. Mr. Taylor, I hand you Exhibit A-64 which I believe you have testified was an audit of the Issaquah [4683] Creamery Company you made in 1932? A. Yes.

Q. Is there any difference between this audit

(Testimony of L. Hicks Taylor.)

and your normal monthly and annual reports?

A. Oh, yes; very much.

Q. What is that difference?

A. This is a detailed audit. I examined all the records at Issaquah, and developed my findings from actual information from the records and detailed each one myself, so that I could sign a statement that I had prepared it, and made an audit, and I so state.

Q. What were the circumstances under which this audit was made?

A. It is my recollection that Mr. Peters and possibly Mr. Hans Forster was present, and that the thought was to somewhat revamp our books in a small way. There was not much of a change necessary, but we wanted to be positive of our figures as of that date to continue on from there, in the—with the actual audited figures.

Q. Have you at any later time made an actual audit of Issaquah Creamery Company?

A. Not a complete detailed audit. I don't believe that I have ever even made a balance sheet audit since this period, and it is my recollection that [4684] I was never requested afterward to make an audit.

Q. At later dates in the '30s, I think some of the exhibits show some further detail with your monthly or annual statements than normally appears. Can you tell us what the circumstances were of those?

A. Mrs.—or Miss Neukirchen was a very capable person at Issaquah, and it is my recollection that

(Testimony of L. Hicks Taylor.)

two or three times she prepared auxiliary documents for me, such as lists of accounts receivable, accounts payable, but they were not officially submitted. They were just turned over to me to fit with the returns, and as I remember, they did reconcile with the ledger accounts.

Q. When you mentioned Miss Neukirchen, is that the one who testified here?

A. No, this was Miss Alice Neukirchen.

Q. That is her sister? A. Yes.

Q. Mr. Griffin has introduced various balance sheets and profit and loss statements for different dates back in the '30s, and brought out that some statements contained different figures than others, which read as of the same date.

You testified, I believe, that in these cases both sets of figures are true. [4685]

Would you explain the reason for this?

Mr. LeSourd: Or, I will withdraw that, your Honor. It has been gone over so much I will ask a more specific question.

Q. (By Mr. LeSourd continuing): Now, I think you also testified with regard to that that the bank, when you were submitting statements, were interested in market values, I think you said?

A. That is correct, yes.

Q. Now, with regard to assets like equipment and routes, what did the tax laws require as to the figures that should be used for those assets?

Mr. Griffin: I object to that question. The witness has shown no qualification to testify as to what

(Testimony of L. Hicks Taylor.)

the tax laws of the United States are. It is calling for an expert opinion.

Mr. LeSourd: On the contrary, your Honor, he is an accountant.

Mr. Griffin: I know what he did. There is no qualification.

Mr. LeSourd: There is many years' experience, and this is ground work for the books he was keeping.

Mr. Griffin: I am serious in that objection.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Griffin: It is not the best evidence.

The Court: I think probably you should ask him if he knows.

Q. (By Mr. LeSourd): Well, if you know, Mr. Taylor.

A. The tax laws, as I understand——

Mr. Griffin: (Interposing) Just a moment. It can be answered "yes" or "no."

Mr. LeSourd: No, it can't be.

The Court: I will ask:

Are you familiar or were you familiar, rather, with the tax laws insofar as they apply to the requirements with regard to establishing the worth of equipment—was it?

Mr. LeSourd: No, as to how the equipment and other like assets should be carried for tax purposes.

I have forgotten how I phrased the question originally.

(Testimony of L. Hicks Taylor.)

The Court: Are you speaking now of income tax laws?

Mr. LeSourd: That is right.

Mr. Griffin: Why don't we get the specific [4687] question now and see whether I have an objection to it?

The Court: Well, could you reframe that, then, Mr. LeSourd, or do you wish the reporter to read it?

Mr. LeSourd: I will reframe it, your Honor.

Q. (By Mr. LeSourd): Under the Income Tax Laws, Mr. Taylor, how are assets like equipment to be carried, on what basis? A. The cost.

Mr. *Griffin*: Any further objection?

Mr. Griffin: I didn't object to that question. That is why I asked it be reframed.

Q. (By Mr. LeSourd): Is there a difference between cost and market value?

A. Yes, a vast difference.

Q. And what is that difference?

A. Many purchases of equipment at cost may be bought very below the market value, and could be considered at the market value from some—in some kinds of application for credit, and so on.

Q. From your experience with banks, what are they interested in as to the figures for assets like equipment? [4688]

A. They are interested in market value.

Q. Now, you——

Mr. LeSourd: Strike that.

Q. (By Mr. LeSourd continuing): What did your books, kept for Mr. Forster's enterprises, show

(Testimony of L. Hicks Taylor.)

as to figures for equipment and like assets?

A. The cost values.

Q. Now, you testified that you made up financial studies and balance sheets and profit and loss statements for the banks at various times, and what did they show as to figures for equipment and other assets?

A. They show the market values, and in the case of routes appraisals and sometimes real estate showed on an appraisal basis.

Q. Now, when you say "appraisal," what has that to do with market value, if anything?

A. Well, appraisal—appraisal companies establish the current market value.

Q. Now, other statements, I think you said, were taken directly from the figures on your ledger. What did those figures reflect for the figures for equipment and like that?

A. In the case that has been mentioned here, an appraisal of routes have been—the routes have been increased to determine a market value of them by [4689] appraisal by Mr. Forster.

Q. Now, there are also among these exhibits that were put in evidence, back in the '30s were profit and loss statements, and I believe Mr. Obenour went over them again this morning as to differences in these various figures.

What changes might be made on a profit and loss statement for credit purposes as distinguished from book values?

A. For a credit man's survey, or a credit man's

(Testimony of L. Hicks Taylor.)

study, they are interested in, somewhat, a profit and loss on the basis of the actual cash withdrawn by officers in the company, or management personnel, and as there are other values, as depreciation, which is purely an estimate, sometimes depreciation values govern, but the Internal Revenue studies can be of a greater amount than the equipment actually depreciates and that, in itself, is again drawing an appraisal to the value of the equipment.

Q. In your experience with banks, do you have any information as to whether or not amounts owed by a corporation to its majority, or sole stockholder, are oftentimes subordinated to bank loans?

A. I have known of a number of cases of that kind. [4690]

Q. And where a bank has made loans to a closely held corporation, what, in your experience, has been their interest so far as seeing the profits before taking into consideration undrawn stockholders' salaries and other amounts owed to stockholders?

Mr. Griffin: I object because it is not redirect or material. It is an entirely new issue.

The Court: This has reference to some items on those statements.

Mr. LeSourd: Exactly, your Honor. Mr. Obenour spent a great deal of time this morning trying to show there is a difference in these profit and loss statements.

The Court: I will overrule objection.

A. The bankers many times like—would like to know a possible development in case of a slow-

(Testimony of L. Hicks Taylor.)

down, whether the salary withdrawals could be reduced, and given an added profit in case of liquidation as I have displayed on those statements, a possibility, in case of liquidation, so the profit figure could be determined by the reduction in salary, and a reduction in depreciation, although depreciation is only an application account. It is not a cash reduction account. [4691]

Q. (By Mr. LeSourd): What was the situation in these years that we are speaking of concerning the deduction by a corporation on the accrual basis of the entire authorized officers' salary whether it was drawn or not drawn?

Mr. Griffin: My same objection; not proper redirect, and it is immaterial, completely a new issue.

Mr. LeSourd: On the contrary, your Honor. We agree that the whole thing was immaterial when originally gone into it, and they have tried to show some impropriety, and we are certainly entitled to bring out the facts as to the situation.

The Court: Objection overruled.

A. The Internal Revenue Department have been —in those years were fairly fair in salaries to the different officers. I do not believe that we had a question on the Issaquah Creamery.

Q. (By Mr. LeSourd): You are speaking now of whether the salary was reasonable or not, are you? A. That is right.

Q. Now, assuming it was reasonable, what is the situation as to whether the corporation was permit-

(Testimony of L. Hicks Taylor.)

ted to deduct the entire salary on its return, even though it wasn't all drawn?

A. That was allowed. The undrawn portion could [4692] be accrued as to salary payable to the officers.

Q. So that any financial statement made by the tax return profit and loss statement would show a deduction of the salaries?

Mr. Griffin: I object as leading, at least.

The Court: Objection sustained.

Mr. Griffin: If this witness will testify, I prefer it.

A. The salaries——

Mr. LeSourd (Interposing): Just a moment.

Q. (Continuing): And what would the profit and loss statement submitted with the tax return show as to the salary allowable?

A. It would be the authorized salary to the officer would be deductible, and the undrawn portion would appear as a liability in the balance sheet.

Q. And what would be the result of that on the profit shown in that tax return statement as compared to the profit shown in a statement submitted to a bank where you showed profit before the undrawn salary?

A. It would show—the tax return would show a lesser profit than the one for credit purposes to the bank.

Q. What would cause differences in the items of notes, or accounts payable, in financial statements [4693] compared for these two different purposes?

(Testimony of L. Hicks Taylor.)

A. Oftentimes an application of an account—financial statements that we have prepared are always from 30 to 40 days after the close of the current year, and sometimes information comes in that would—that affects the appearance of an accounts receivable, or it might affect a cash picture, and make changes as though—in a cash position there may be sometimes the bank overdraft, and you reduce the debit cash by a bank overdraft, and then not show the same overdraft as a liability, and you can have bad debt reserves that you restore.

Q. Now, just a moment, I would ask you, Mr. Taylor, about accounts payable:

In the statements that were shown to you, where differences appeared under the words "accounts payable", what is the situation as to whether or not there were different breakdowns of that, of accounts payable, on these various statements?

A. Many times, there will be various headings in your ledger accounts under accounts payable liabilities that will be assembled or consolidated, into one account on a skeleton or short form balance sheet.

Q. Then how about on a balance sheet prepared [4694] for other purposes?

A. They sometimes are detailed more than on others.

Q. And what would cause differences in these financial statements for different purposes in your notes and accounts receivable?

A. Well, the situation of an accounts receivable

(Testimony of L. Hicks Taylor.)

might be converted into a note during the interval and be transferred into the note account, which would reduce the accounts receivable account, and it is possible that there might be credits on the accounts receivable that you might throw into a liability, and allow the higher amount of accounts receivable to appear.

Q. Now, how about differences in the item of cash?

A. Differences in the item of cash would be the assembling of the cash. You might have a large cash balance, a bank overdraft; you could carry the bank overdraft, or apply it against the cash account to reduce the cash account; you can take—it has been known to be taken that the outstanding checks would be considered a liability instead of applied to the bank, and used the total shown on the bank statements, and show it checks outstanding as checks in transit on the [4695] liability side of this balance sheet.

Q. All as accounts payable?

A. All as accounts payable.

Q. Now, what would cause differences in the amount of inventory?

A. There are many ways that an inventory could have a difference. For instance, right close to the end of the year, someone has much——

Mr. Griffin (Interposing): Just a moment, if the Court please, isn't the question what he did, rather than any theory of what might have oc-

(Testimony of L. Hicks Taylor.)

curred? I object to this line of questioning. I have no objection to what he did, and why.

The Court: I assume that probably the background of some of these matters are not available?

Mr. LeSourd: If your Honor please, this witness was put through this situation: he was put on the stand and presented with a myriad of financial sheets over 20 years ago, and expected to remember every single adjustment that occurred. Of course, he can't. What he has to testify to is the general type of differences that occurred, and I will ask him as to whether the adjustments—in due course, I will ask him whether the adjustments made in these are the reflections of these various types of differences. [4696]

Mr. Griffin: If he can't remember what he did, how can he testify as to what they are? That is my objection.

The Court: Well, in view of the nature of the situation, I think that the objection should be overruled. Generally speaking, if the items are available, the figures are available, they possibly should be produced, if they can be, but it might unduly lengthen the trial, and the Court, under the circumstances, will overrule the objection.

Mr. Griffin: Now, I am a little at a loss to know what your Honor is referring to by figures being produced.

The Court: As I understand it, many of the balance sheets and profit and loss statements in the

(Testimony of L. Hicks Taylor.)

past years may or may not have been based upon other work sheets.

Mr. LeSourd: That is right, your Honor, and based on appraisals of assets which were given this man for use in market value, and all sorts of different things, which are not available today.

Mr. Griffin: Well, I had understood—I don't know anything about any work sheets in those years in question, by testimony or otherwise, but they have been made available. The Government made available to counsel for both parties, so far as I know, and understand all [4697] documents of every kind, nature, and description in connection with this matter.

Mr. Moriarty: So far as we know, as far as we have had.

Mr. Griffin: Right. I take it the obligation is just as much upon counsel who had that right of investigation and did investigate to produce them or show——

Mr. Moriarty (Interposing): There were a number of documents not delivered to us, but which stayed in your possession.

Mr. Griffin: Right. That one box which they had access to, and which they went over.

Mr. LeSourd: If Mr. Griffin desires, we will suspend for a week and go back into the files to 1932 and analyze every transaction, but, your Honor, when this came in, we objected to it as utterly irrelevant and immaterial, and we think it is still, but over our objection Mr. Griffin and Mr.

(Testimony of L. Hicks Taylor.)

Obenour went into these matters in detail, item after item, trying to make it appear that this witness was giving different statements of profit and balance sheets.

We can take a week off, and study those things, if the Court desires, but I feel that the witness can testify here as to the type of changes that this [4698] consisted of, and can testify that in general these different financial statements reflected this type of a change without going into that in detail.

The Court: Well, I will again state, if there are work sheets or other data that is available, that can be produced, I think that it probably should be produced. However, the Court will not require that, and under these circumstances, the matter covering the past years I am inclined to overrule the objection.

Mr. Griffin: Now, in the light of your Honor's statement, I make this statement to you as an officer of this Court:

That, as far as I am concerned, there has been produced, and there has been available to the witness on the stand, every document that ever came into the possession of Hans Forster from this witness, and upstairs, recess period after recess period, there has been examination in the office of the Government, left there for that purpose and used by both counsel all the time and any documents we thought were admissible here, or bearing on any matter, I brought into this courtroom, every single

(Testimony of L. Hicks Taylor.)

solitary document that I thought was bearing upon any question that I asked.

I withdraw the objection in the light of your [4699] Honor's ruling, but I don't want any inference that I haven't presented here everything that we could find.

I will ask, in the light of your Honor's statement, later during this trial,—a thing I didn't go into because I thought it was immaterial, irrespective of what the witness said,—to call witnesses to show precisely the nature of the stuff he left at Issaquah.

I will ask leave to do that before we close the trial now.

The Court: The Court—I will advise the Jury the Court, by comment on the evidence here, doesn't mean to indicate that there has been any effort made on the part of Mr. Griffin to not make available any and all documents that have been made available to him, or to the defendant Forster.

The Court, in making this ruling, believes it may serve that a reasonable opportunity be given to the witness to meet some of the matters brought out on cross-examination. The effectiveness and the weight of the answers is a matter for the Jury.

You may proceed.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): I believe I asked what would cause differences in the item of inventory between the statements for your books and the statements for credit purposes? [4700]

A. Many things could affect an inventory. The

(Testimony of L. Hicks Taylor.)

particular one, if a person who was a creditor of the company would turn back merchandise which would go into the inventory and be credited to his accounts receivable, and it happened very close to the closing time, it would make the inventory picture a little different, and the accounts receivable, and there is a possibility that there could be between the time of closing of the books and a 30-day period, an increase in the value of that inventory, which a man for credit purposes might take advantage of on the same market value basis.

Q. One more item along that line: Did you have reserve for bad debts set up in these years?

A. It is my recollection that we did in two or three different years.

Q. And would it be—might there be any differences in reserve for bad debts in the treatment of those on the books for tax purposes and for credit purposes?

A. If a party is on the reserve basis, and establishes that with the Internal Revenue, he must stay on a reserve basis, if he is reporting income that way, but if he is only setting up a reserve for his own information, it is possible that he can reanalyze the [4701] accounts that have been set in reserve, and set some of them up as current accounts or even eliminate the reserve accounts and let the credit agency determine the collectibility of some of those accounts.

Q. Would that—would such adjustments and bad debts likewise affect profit or loss?

(Testimony of L. Hicks Taylor.)

A. They would affect profit or loss, yes.

Q. Now, did Mr. Beadon Hall ever ask you to give him a false statement?

A. Absolutely not.

Q. Mr. Griffin put that question to you, Mr. Taylor, and I believe you answered you couldn't remember just what Mr. Beadon Hall asked you. Why did you make that answer?

Mr. Griffin: Objected to as cross-examination of his own witness.

Mr. LeSourd: On the contrary, your Honor.

The Court: I believe the form of the question is objectionable. If he wishes to explain his answer, he may.

Mr. LeSourd: Yes.

Q. (By Mr. LeSourd continuing): Would you explain your answer to Mr. Griffin's question?

A. I believe in the examination I was a little [4702] confused as to what the question was about, and answered without having proper thought of what the question was intended to convey.

Q. Did Mr. Beadon Hall ever talk to you about these credit statements?

A. During the critical period, as Mr. Beadon Hall himself testified to, Mr. Hall used to have Mr. Forster and I come to the bank almost every month and go over the statements with him.

(Whereupon, there was a brief pause.)

Q. During your cross-examination, Mr. Taylor, there was mention made of the item of real estate, and it was brought out that the item of real estate

(Testimony of L. Hicks Taylor.)

was not on the balance sheet for several years, and I believe you testified that it was in equipment.

Handing you Plaintiff's Exhibit 262, I will first ask you what this book is?

A. This book is the general ledger of the Issaquah Creamery Company.

Q. And the book is opened at what sheet?

A. It is a ledger captioned real estate, equipment and trucks, and——

Q. (Interposing): Go ahead.

A. And the date is 1939, January 1st, and on the left-hand side of the ledger sheet, on the debit side, we [4703] have real estate $9,557.44; equipment $88,394.12; and the third item of trucks, $21,677.83. On the credit side, under the same date on the right-hand side of the page, we have depreciation reserve, $62,938.77.

Q. Real estate and equipment is all in one account?

A. It is combined into one fixed asset account.

Q. Now, generally, in connection with these statements back in the '30s, you were repeatedly asked questions, I believe, such as which of these statements was false, why did you manipulate the figures, and like questions. Are any of these statements false that you made, Mr. Taylor?

A. No, they are not.

The Court: When you refer to statements, are you referring to statements on the stand?

Mr. LeSourd: No, I am referring to the financial statements back in the '30s that were identified

(Testimony of L. Hicks Taylor.)

on cross-examination and I will repeat my question in the light of that matter.

Q. (By Mr. LeSourd): Were any of them false?

A. No, they were not. [4704]

Q. Now, prior to 1940, Mr. Taylor, how many ledgers did you have for the business of Issaquah Creamery Company?

A. The Issaquah Creamery was made up of one ledger until 1940.

Q. And prior to 1940, what did that include with relation to the business of Alpine Dairy?

A. The Issaquah Creamery carried all of the assets and liabilities and the operating accounts of the Issaquah Creamery and the Alpine Dairy were kept separately. I mean by that, sales and purchases and expenses were kept separate between Issaquah and Alpine, but all appeared in the same statement.

Q. All in one ledger?

A. One ledger, yes.

Q. Now, Mr. Griffin asked you if Mr. Forster relied on you in accounting matters? Were there others involved in the accounting from 1945 to 1949 in these witnesses on whom he relied?

A. Yes.

Q. Who?

A. Mr. Erickson, Mrs. Wilcox, Mr. Keck.

(Whereupon, there was a brief pause.)

The Court: Do you want to take a recess now, Mr. LeSourd? [4705]

Mr. LeSourd: That would expedite matters, your Honor, while we get some exhibits.

(Testimony of L. Hicks Taylor.)

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given, on similar occasions, and asks that you heed it on this occasion. You may now be excused.

* * * * * [4706]

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): Mr. Taylor, going back to the subject of the various balance sheets and profit and loss statements back in the 1930's which were introduced, you have, earlier on my redirect examination, outlined a number of changes that would take place between a report for tax purposes or book purposes and credit purposes.

Were the changes which you made in balance sheets and profit and loss statements during that period for credit purposes of the type and nature that you outlined? A. Yes.

Q. Mr. Taylor, you recall, do you, that on cross-examination you were questioned with regard to the closing out of an Arctic Gardens bank account in the National Bank of Commerce?

A. Yes, I remember. [4716]

Q. And this was in November, 1948, as you recall it? A. Yes.

Q. And you recall that you were asked questions with regard to the balance of $64.57 that was in that account? A. Yes, I remember.

Q. And, handing you Exhibit A-117, is this the

(Testimony of L. Hicks Taylor.)

check for that amount which you were presented on cross-examination?

The Court: Is this A-117?

Mr. LeSourd: A-117, your Honor.

The Witness: Yes, this is a check issued to L. Hicks Taylor for $64.57.

Q. (By Mr. LeSourd): And do you recall your testimony that that amount that you received in closing out that account was applied on your fees?

A. I remember so testifying.

Q. Now, the Arctic Gardens had another bank account?

A. Yes, its physical bank account was at the Peoples Bank. This was at the Queen Anne Branch, National Bank of Commerce.

Q. And did you have a check register for the Peoples Bank account? [4717]

A. Yes, I did.

Q. And from what account were your fees normally paid?

A. From the Peoples Bank account.

Q. Handing you Plaintiff's Exhibit 274, I will ask you if this is the Arctic Gardens check register for the Peoples Bank Account that you have mentioned?

A. Yes, this is the "easy to deduct" check register.

Q. Now, examining that check register, Mr. Taylor, for the month of November, 1948, do you find any reference in the check register to the amount that you closed out of the National Bank of Com-

(Testimony of L. Hicks Taylor.)

merce account? A. Yes, I do.

Q. And will you read the entries made in this check register concerning that matter?

A. It is dated the 21st day of November, 1948, a check made out to L. Hicks Taylor. In the explanation column, September and October fees, National Bank of Commerce, $64.57, check on the Peoples National Bank for $35.43, making the fee for the two months of $100.

Q. And what was the fee that you were receiving, please, per month from Arctic Gardens at the time? A. $50 per month. [4718]

Q. Concerning the check of $773.21, interest, which I think you testified, did you not, that you gave to both Mr. Forster and Mr. Brehm, at the end of 1945, I think it was, what was said, if anything, at that time—at the time that you gave them these checks as to the use being made of the checks?

A. My recollection is that they were to be applied on the interest payments at the various banks that had borrowings. Mr. Brehm had borrowings through the National Bank of Commerce, Queen Anne Branch, and Mr. Forster at the Peoples Bank.

Q. Where were these checks delivered to these gentlemen?

A. It is my recollection it was in my office, although I am not positive.

Q. And what was the date?

A. The last day of the year, I believe.

Q. Now, what was your understanding as to

(Testimony of L. Hicks Taylor.)

whether money borrowed by Mr. Forster and Mr. Brehm was for the benefit of Arctic Gardens?

Mr. Griffin: Object to the form of that question.

Q. (By Mr. LeSourd continuing): Well, what did you know about that matter, or what had you been told? [4719]

A. Mr. Brehm and Mr. Forster contributed $35,000 in loans to the $35,000 each in loans to the Arctic Gardens.

Q. Had you been informed of anything about the source of that money?

A. I understood in each case it was borrowed at the various banks.

Q. Now, if the $773.21 paid to each of them by these checks had been used to pay the interest on the loans at the bank made for the purpose of Arctic Gardens, would there have been any taxable income to Mr. Forster?

A. There would not.

Q. Now, referring to Simonson and Forster, Mr. Taylor, Mr. Griffin, I believe, asked you whether the $100 monthly payments to Mr. Forster would not be income to Mr. Forster even though repaid in the next year, and I believe you answered "no".

Will you tell us where a person receives money from a corporation and is obligated to repay it, is it income to him? A. It is not.

Q. Now, under the information which was given to you at the end of 1948, which you reflected in your adjustment, was Mr. Forster obligated to repay the money he had received? [4720]

(Testimony of L. Hicks Taylor.)

A. No, not in my opinion, he wasn't.

Q. Was he obligated to repay that money?

A. That was the understanding between Mr. Forster and Mr. Simonson.

Mr. Griffin: May the previous answer to that same question be read, if the Court please?

The Court: The original question and answer?

Mr. Griffin: Yes, your Honor.

The Court: Mr. Reporter, read the question and answer.

(Whereupon, the following was read by the reporter:

"Q. Now, under the information which was given to you at the end of 1948, which you reflected in your adjustment, was Mr. Forster obligated to repay the money he had received?

A. No, not in my opinion, he wasn't.")

The Witness: I misunderstood the question. I thought you said it was to be reported taxable.

Mr. LeSourd: Now, to clear this up:

Q. (By Mr. LeSourd): Under the information you received, what was the situation as to whether Mr. Forster was to repay this money? [4721]

A. I understood it was to be repaid.

Q. Now, with regard to the year 1949, of Simonson and Forster, before the trial, did you see your work sheet for 1949?

A. It is my recollection that we saw the 1939 worksheet, yes.

Q. 1939 or 1949?

A. 1949 worksheet, yes.

(Testimony of L. Hicks Taylor.)

Q. When was that?

A. Well, it seems to me it was before the trial started.

Q. And do you recall where it was?

A. I believe in the building here.

Q. And who was with you at the time?

A. You and Mr. Cox were with me, as I remember.

Q. Have you been able to find that worksheet, since? A. No, I have not seen it since.

Q. Was there someone from the Government there in the room at the time?

A. It is my recollection there was, yes.

Q. Now, did that 1949 worksheet have any adjustment for these payments to Simonson and Forster?

A. Yes; it restored the $1200 to profit. My recollection is that it was either placed to the debit [4722] of equipment, or notes receivable. I cannot remember definitely.

Q. Now, in the cross-examination, I believe, of Mr. Obenour, with regard to the matter, I believe you found in the books that the adjustment on the Simonson and Forster books was made in the wage column; would it make any difference whether it was in the wage column, or the expense column?

A. It wouldn't make any difference in the over-all picture.

Q. When you say "over-all picture"——

A. (Interposing): That is, the expenses would

(Testimony of L. Hicks Taylor.)

have been reduced by $1200 regardless of what column it happened to be placed in.

Q. Now, there has been this testimony about the March and April, 1949, Issaquah Creamery Company statements where you showed a minus inventory in order, as you testified, I believe, to indicate the possibility of error in the information given to you. Now, do you recall whether or not you discussed this matter with Mr. Erickson at that time?

A. Well, it is my recollection that some discussion was had about it.

Q. Did this adjustment continue after April, 1949? A. Not to my recollection, no. [4723]

Q. Did this adjustment have any effect upon income tax?

A. Absolutely none. It was only descriptive for the inter-monthly statements.

Q. Mr. Griffin asked you some questions about the reconciliation of accounts payable in connection with the charging of Mr. Forster's personal expenses to business expense.

Would a reconciliation of accounts payable have shown anything concerning these improper charges?

A. No, I don't believe that they could have possibly shown anything about them.

Q. Would a reconciliation of accounts receivable have shown anything with regard to these improper charges? A. No.

Q. Coming now to this 1949 year-end adjustment, Mr. Taylor——

Juror Number Seven: Your Honor, I wonder

(Testimony of L. Hicks Taylor.)

if we could have those boxes set down? It is kind of hard to look over and see Counsel.

(Whereupon, boxes were removed from a table by the Bailiff.)

The Court: Is that clear now?

Juror Number Seven: Yes. [4724]

Q. (By Mr. LeSourd continuing): There was a change in accounts payable, you testified, that was given to you by Mr. Erickson of $51,578.76. Was that entered in accounts payable in your ledger?

A. Yes.

Q. Can you find the place, handing you Exhibit 271, where that was entered?

A. It is included in a total of $98,616.29.

Q. Now, is that included in that one figure, or is it broken down among several figures?

A. Only in one figure.

Q. Was there an offsetting entry to that made in your ledger?

A. Yes, to the expense control account.

Q. And to what part of the expense control account?

A. It appears to have been entered under milk purchases.

Q. In the purchases?

A. Yes, in the purchases.

Q. And, on your work sheet, Plaintiff's Exhibit 259, was that—how was that entered?

A. It was included in the accounts payable.

Q. And what was the offsetting adjustment on the work sheet? A. Purchases.

(Testimony of L. Hicks Taylor.)

Q. Now, on the column in that work sheet 259 that contains this figure $51,578-and some cents, which you stated you wrote down and Mr. Erickson gave it to you, there are some other figures, I believe, that you testified to. Which of the figures in that column were given to you by Mr. Erickson?

A. Well, there was $10,000 to milk drafts.

Q. Now, stopping there for a moment, in what form was that given you by Mr. Erickson?

A. Mr. Erickson said there would be five thousand increase in November and five thousand increase in December, making $10,000 to milk drafts.

Q. All right, and which of the other figures were given to you?

A. And then the $51,578.76 in accounts payable.

Q. And how was that given to you?

A. In one amount.

Q. One amount; and what other figure, or figures?

A. Mr. Erickson said "Increase the inventory". The way he said it, I misunderstood him. He said [4726] "Increase inventory twenty-two", and I wrote in that column $32,978.70, or 90, and then the office called to my attention that that was ten thousand too high.

Q. Now, after you wrote that thirty-two thousand inventory figure in, did you do anything with your work sheet before Mr. Erickson caught your error?

A. Yes, I had worked it out with the thirty-two as the inventory.

(Testimony of L. Hicks Taylor.)

Q. And it was at that time that he told you that there was—that you had misunderstood him on inventory?

A. Yes, he called my attention to it.

Q. Now, the other figures in that adjustment column, I believe you testified to, were simply totals?

A. It appears from those that there were probably a cumulation of a number of figures probably for income tax, or for some other type of statement.

Q. Also, Mr. Taylor, on cross-examination you were asked concerning your testimony that you had examined the sales of 1948 in connection with 1949. Did you examine these 1948 sales in connection with your—in connection with the original figures that you were given on January 28, 1949, when you went out to— [4727] January 28, 1950—when you went out to Issaquah, or in connection with the revised figures given you by Mr. Erickson?

A. It is my recollection that I—after I received these figures, then I had both taxes, the 1948 tax return, before me, and made the comparison.

Q. When you say "received the figures", which—

A. (Interposing) I mean, after I returned to my office, I—after I had made this adjustment, I took out the 1948 Issaquah Creamery tax return, in preparing the 1949, and made the comparison.

Q. By "this adjustment", you mean the figures Mr. Erickson gave you? A. Yes.

Q. Mr. Taylor, what were the circumstances giv-

(Testimony of L. Hicks Taylor.)

ing rise to the failure to report all of your own income in the years 1940 through 1948?

A. Well, I was working very long hours, practically all my working hours, in my business, and I had a record there to post all of my income, but I did not report them in their entirety, because of the complication, I had various types of income, checks of other peoples, and I did not get them segregated sufficiently to make a proper tax return.

Q. Now, there was testimony—cross-examination—about your conferences in Mr. Kachlein's office [4728] on September 13, 1950, and October 27, 1950.

Now, in either of these conferences, Mr. Taylor, did Mr. Kachlein tell you that he had on April 26, 1950, stated to a Revenue Agent that if there were errors in Mr. Forster's returns, they were due to your sloppy accounting?

Mr. Griffin: Objected to as not redirect examination.

Mr. LeSourd: Counsel brought the matter up. He brought out at length, your Honor, those meetings in an attempt to indicate that Mr. Taylor knew everything that was gone over, and willingly dropped this matter.

The Court: Well, objection overruled.

A. He did not mention it.

Q. (By Mr. LeSourd): And did he, in those meetings, say anything to you about statements made on August 29, 1950, by him to a Revenue

(Testimony of L. Hicks Taylor.)

Agent that you were responsible for any irregularities of Mr. Forster?

Mr. Griffin: I object. A. No.

The Court: Just a moment.

Mr. Griffin: I object. Not redirect examination. The question was asked on cross-examination.

Mr. LeSourd: It goes to the——

Mr. Griffin: (Interposing) No such question was asked on his own examination on redirect.

Mr. LeSourd: Certainly no question was asked on direct.

The Court: Objection overruled.

A. No, he did not. * * * * * [4730]

L. HICKS TAYLOR

upon being recalled as a witness for and on behalf of the Defendant Taylor, and having been previously duly sworn, testified as follows:

Redirect Examination

Q. (By Mr. LeSourd): Mr. Taylor, earlier in your examination you testified that you had first learned that the Government was considering the possibility of action against you in this case by a letter from the Agents which you said you thought you got the latter part of 1950, or the first part of 1951.

The Clerk: Defendants' Exhibit A-127 marked for identification.

(Defendants' Exhibit A-127 marked for identification.)

Q. (By Mr. LeSourd continuing): Handing you

(Testimony of L. Hicks Taylor.)

Defendants' Exhibit A-127 for identification, I will ask you what that is?

A. This is a letter, a registered letter, from the Treasury Department, signed by Mr. Ira Eppler as Special Agent, and dated October 12, 1950.

Q. Now, when did you receive that letter, do you know? [4746]

A. By glancing at the letter, it refreshes my recollection that a notice of a registered letter was at my home when we returned from our vacation on October 25th, and I just don't recollect whether I picked it up the next day, or a couple of days later. I am not quite positive of the date of picking it up at the post office.

(Whereupon, there was a brief pause.)

Mr. LeSourd: I will offer Defendants' Exhibit A-127.

Mr. Griffin: Objected to as incompetent, irrelevant, and immaterial, and hearsay. It was only used to refresh recollection, and did refresh recollection.

Mr. LeSourd: On the contrary, your Honor, in cross-examination of this witness, Mr. Griffin went at length into all of the circumstances surrounding this meeting at the end of October, between Mr. Taylor and Mr. Kachlein, and when Mr. Taylor was informed of the possibility that the Government might consider charges against him.

I think we are entitled to introduce this letter to show those facts.

(Whereupon, there was a brief pause.)

(Testimony of L. Hicks Taylor.)

Mr. LeSourd: It is not hearsay, of course, your Honor. [4747]

The Court: I will finish reading this.

Mr. LeSourd: Very well; I am sorry.

(Whereupon, there was a brief pause.)

The Court: I am inclined to sustain the objection, Mr. LeSourd.

Mr. LeSourd: Well, if your Honor please, it shows the information that was brought to the attention of this witness at the time.

The Court: I understand.

Mr. LeSourd: And we feel it is entirely proper as showing that in view of the cross-examination on this subject. It is a matter opened up by counsel for Mr. Forster.

The Court: Well, the other evidence might be admissible, but as a letter, I think it is subject to objection as hearsay. I don't know any—on any ground it might be admissible, Mr. LeSourd,——

Mr. LeSourd: (Interposing) Well,——

The Court: (Continuing) ——as not being hearsay, or an exception.

Mr. LeSourd: It is admissible, your Honor, on the ground that here is the information brought to the attention of Mr. Taylor at that time, and as showing what he was advised at the time. That certainly is not hearsay. [4748]

The Court: Well, of course, we are not presented now with the question as to the information received, but the admission of the letter itself is, I

(Testimony of L. Hicks Taylor.)

think, subject to objection. I would sustain the objection at this time.

If you wish to urge it further, I will hear further from you at recess.

Mr. LeSourd: That is all my examination.

The Court: Mr. Keesling?

Mr. Keesling: No further questions.

The Court: Does the Government have anything?

Mr. Obenour: No further questions.

Mr. Griffin: I have one on one exhibit.

May I see Exhibit 122, please?

The Clerk: 122?

Mr. Griffin: 122.

(Whereupon, document was handed to Mr. Griffin by the Clerk.)

Mr. Griffin: It is my error; I am sorry. A-122.

(Whereupon, there was a brief pause.)

Mr. Griffin: That is the bonus payments.

(Whereupon, exhibit was handed to Mr. Griffin by the Clerk.)

Mr. Griffin: And would you mark these for identification as one exhibit? [4749]

The Clerk: Defendants' Exhibit A-128 marked for identification; as one exhibit?

Mr. Griffin: If you please.

The Clerk: Defendants' Exhibit A-128 marked for identification.

(Defendants' Exhibit A-128 marked for identification.)

(Testimony of L. Hicks Taylor.)

Recross Examination

Q. (By Mr. Griffin): Mr. Taylor, A-122, introduced in evidence as Finstad and Utgard bonus payments, do you recognize that document as such; do you?

Mr. LeSourd: Objected to, your Honor. He testified originally he didn't recognize the document. It was introduced just to show the figure which Mr. Griffin was supposedly leading.

The Court: Is the question directed to whether he recognizes the exhibit as an exhibit, or——

Mr. Griffin: (Interposing) No, as the bonus payments. A. I do not.

Q. (By Mr. Griffin): Handing you Exhibit A-128, can you identify those?

A. I am sorry; I cannot. [4750]

Q. However, Mr. LeSourd examined you, as you will recall, with reference to A-122 and placed it in evidence; do you recall that?

A. Yes, I remember it.

Q. Your testimony in regard to the bonus payments was that you used in your computations $10,000, placing it somewhere and charging it off in the Finstad and Utgard statement—tax return—to bonus payments, wasn't it?

A. It was set up as Accounts Payable.

Q. Yes; the exhibit A-122, Mr. Taylor——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): You also testified that bonus payments were made to a large

(Testimony of L. Hicks Taylor.)

number of people by Finstad and Utgard, is that correct? A. As I recollect, yes.

Q. And you referred to both Skagit and Snohomish Counties, I believe, is that right?

Mr. LeSourd: I object to that as an improper quotation. There was no testimony to that effect.

The Court: If that isn't correct, the witness may so indicate. Objection overruled.

A. It is my recollection that I said at Stanwood and Mt. Vernon, did I not? [4751]

Q. (By Mr. Griffin): You also said Snohomish County, did you not?

A. I don't just recollect. I may have.

Q. I will ask you if it is not a fact that A-122 shows the individual name and the amount paid to each person, or customer, whichever it may be,—anyway, to each individual,—entitled to a bonus payment?

A. That would appear to be the case, yes.

Q. And the total amount was $2,139?

A. On that sheet, yes.

Q. Were there any other bonus payments other than shown on this sheet, Exhibit A-122, for the year 1947? A. I do not know.

Q. Did you check the check register to ascertain what bonus payments were made?

A. I did not.

Q. You simply used $10,000 irrespective of what the bonus payments were?

A. 1944 was the basis of establishing that their bonus payments were over ten thousand dollars.

(Testimony of L. Hicks Taylor.)

Q. In 1944, Mr. Taylor?

A. I believe that is correct.

Q. You were familiar, then, with the bonus [4752] payments and amounts, were you?

A. Only by what I was shown by Mr. Egeness.

Q. What were they in 1945?

A. I don't know.

Q. Would you say they were in excess of $2,078.65?

A. I would assume they were, yes.

Q. And do you know what they were in 1946?

A. I do not.

Q. Would you say they were in excess of $2,088.08?

A. I would assume they were a great deal more than that.

Q. And do you know what they were in 1949?

A. I do not.

Q. Would you say they were in excess of $2,633.15?

A. I would assume they were a great deal more than that.

Mr. Griffin: That is all.

Mr. LeSourd: One additional question on that last, your Honor.

Re-Redirect Examination

Q. (By Mr. LeSourd): Mr. Taylor, in answer to Mr. Griffin's question whether this was a—whether the exhibits [4753] showed a list of each person entitled to a bonus payment, you said, "yes":

(Testimony of L. Hicks Taylor.)

were you referring to each person on the list, or did you mean by that, that that included the list of everyone that received a bonus payment?

A. No, I did not mean that. On the list that was before me, on the exhibit before me, it showed eight names, as I remember it.

Q. Did you participate in making those bonus payments?

A. I had no connection with it, no.

Q. Were you familiar with exactly the number of people that did receive bonus payments?

A. No, I was not.

Mr. LeSourd: That is all.

The Court: That is all, Mr. Taylor.

The Witness: Thank you.

(Witness withdrew.)

Mr. LeSourd: We will call Mr. Jack Taylor.

J. L. TAYLOR

upon being called as a witness for and on behalf of the Defendant Taylor, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name, please?

The Witness: J. L. Taylor, 102 North Broadway.

Q. (By Mr. LeSourd): Would you state your name, please? A. J. L. Taylor.

Q. Where do you live?

A. 102 North Broadway.

(Testimony of J. L. Taylor.)

Q. Are you related to Mr. Hicks Taylor, the defendant in this case?

A. I am a brother.

Q. In the summer of 1950, Mr. Taylor, while Mr. Hicks Taylor was at McNeil Island, did you have any conversation with Mr. Hans Forster with regard to the matter of Mr. Hicks Taylor's accounting license?

A. Yes, I told him I contemplated getting a petition out to get his license back as soon as he returned from the Island; that I had been called upon by a couple of men in that respect.

Q. Where were—where was this conversation, [4755] Mr. Taylor?

A. At the Alpine Dairy on Rainier Avenue.

Q. How did you happen to have this conversation?

A. I went out to get a load of ice cream. I used to get ice cream and put it in my locker from there, and Mr. Forster, while I was paying the bill, came out and took me into his private office, and we had our conversation in there.

Q. What was the—can you relate that conversation as closely as possible?

A. Well, I told him I was contemplating getting out a petition to get his license returned, and all his rights, and so forth, so that he could practice as soon as he came back, and Mr. Forster told me that his hands were tied, and about that time, the telephone *ran* and he is on the phone, oh, for about

(Testimony of J. L. Taylor.)

ten minutes, and I got up and got my ice cream and went out.

Q. Can you fix the date of that conference?

A. Well, it was, I would say, between the 15th of August and the 21st. It probably was on a Thursday or a Friday.

Q. What year is that? A. 1950.

Q. It was on a Thursday or a Friday?

A. I would think so. It was on a week-end, [4756] generally, that I picked up the ice cream and put it in my locker.

Q. Handing you Defendants' Exhibits A-77 and A-78 for identification, do these in any way assist you to fix the date of that meeting?

A. Yes; that is about as near as I would like to come to it, a Thursday or a Friday, though.

Q. And what would be that date in 1950, in August, 1950, approximately?

A. Well, the 21st was Monday; so, Thursday—I have an idea it was Thursday—Thursday would—let's see, maybe you can figure better than I can.

Q. Well, if the 21st is Monday, I would say that Thursday is about the 17th of August.

A. 17th.

Q. Now, what next happened after that conversation with regard to this matter?

A. We received a letter from my brother telling us to not go ahead with whatever we had planned; that Mr.—as I remember, Mr. Kachlein had contacted him and didn't want us to go through with it.

(Testimony of J. L. Taylor.)

Q. When did you receive that letter, do you recall?

A. That was on the 21st. Let's see, well, that was dated the 21st. We probably received that the 22d. [4757]

Mr. LeSourd: That is all.

Mr. Obenour: No questions.

Mr. Griffin: No questions.

Mr. Keesling: No questions.

Mr. LeSourd: That is all, Mr. Taylor.

(Witness excused.)

Mr. LeSourd: I will call Mrs. Taylor.)

* * * * * [4758]

HANS FORSTER

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Griffin): Mr. Forster, this is what in a trial we call Rebuttal, and the questions that I ask you, I want, if possible, under our procedure, answers of "yes" or "no".

Mr. Forster, at the time of the split-off of the Alpine Dairy from Issaquah Creamery, did you suggest to Mr. Taylor in substance or effect that Mr. Erickson could handle the journals at Issaquah? A. No, I didn't, sir.

Q. Did you state, in substance or effect, that that would save money on Taylor?

(Testimony of Hans Forster.)

A. No, I didn't.

Q. With reference to the Renton Ice and Ice Cream Company, did Mr. Taylor at the first corporate meeting of the Renton Ice and Ice Cream Company, or at any other time, tell you—direct you—or suggest that you should deposit the checks that you would receive from out the salary of the other incorporators of the Renton Ice and Ice Cream Company [4842] in the Alpine Dairy account?

A. No, he didn't.

Q. Did Mr. Taylor say in substance or effect that he wanted that done so that the checks and the proceeds received by you would not show on the tax returns? A. No, he didn't.

Q. With reference to Simonson and Forster, did Mr. Taylor ever ask you if the $100 a month you received, being $1200 a year, did he ever ask you in substance or effect, if that was salary?

A. No, he didn't.

Q. Did Mr. Taylor ever suggest to you, in substance or effect, that you should pay back to either Simonson, or Simonson and Forster, this $100 a month, or $1200 a year?

A. No, he didn't.

Q. Did you say to Mr. Taylor in substance or effect, that you could not see why you should pay tax upon those items, when the $100 a month, or $1200 a year, was being withdrawn from capital?

A. No, I didn't.

(Testimony of Hans Forster.)

Q. Did Mr. Taylor ever inquire about that $1200 at all, to you?

A. He didn't, sir. [4843]

Q. Did you ever hear, until Mr. Taylor took the witness stand, that he had charged those items, or something in regard to them, off to equipment?

A. No, I didn't know about it before.

Q. Did Mr. Taylor ever discuss with you the tax items at Simonson and Forster, at all?

A. No, he never did.

Q. The Alpine Ice Cream Company——

A. (Interposing) No.

Q. (Continuing) ——I am referring to now. At the time of the formation of the Alpine Ice Cream Company, or at any time, did you say to Mr. Taylor that Mr. Erickson would keep the books?

A. No, I never did.

Q. Did Mr. Taylor ask you at the time of the formation of the company, or about that time, whether you wanted him to continue on?

A. No, he never asked me that question.

Q. And did you say, in substance or effect, "No, Erickson would handle the books at Issaquah"?

A. No, sir.

Q. Did you consider Daisy Ice Cream Company, which became Alpine Ice Cream Company, a part of the Alpine Dairy operations?

A. Yes, I did. [4844]

Q. Now, in regard to the year-end matter of 1949, in—on or about the last Saturday in January, 1950, or at any time thereafter, did Mr. Taylor

(Testimony of Hans Forster.)

phone you and ask if he should proceed with the books? A. No, he didn't.

Q. Did Mr. Taylor at about that time, or at any time, phone you as to whether changes were to be made, and did you tell him to call Erickson, that there would be some changes?

A. No, I didn't.

Q. Did you ever have a telephone conversation with Mr. Taylor in regard to that matter at all?

A. No, I never did.

Q. Did you have any conversation with Mr. Taylor in regard to that year-end matter after your conversation with him on or about January 28, 1950, and I am referring to the last Saturday in January, whatever it was? A. No, sir.

Q. Mr. Taylor testified that when the income tax return for—was ready for the year 1949, which would be some time in March, 1950, that he called you to bring in the check, advising you the amount of the check, and to sign the tax return, and at that time, did Mr. Taylor show you any of his work sheets, whether [4845] in evidence or not, and explain the—what he says was a 51 thousand dollar change in accounts payable? A. No, sir.

Q. Did Mr. Taylor at that time say to you in substance or effect, or at any time, that you and Mr. Erickson will have to substantiate the charge and take care of it?

A. No, he never did.

Q. Did he discuss the matter with you at all?

A. No, he didn't.

(Testimony of Hans Forster.)

Q. Aside from your observing these monthly visits at Issaquah, Mr. Taylor working upon what has been referred to here as work sheets, did he ever show you the work sheets and explain them to you? A. No, sir.

Q. Did Mr. Taylor ever explain to you or discuss with you these changes in inventory that have been testified to? A. No, sir.

Q. Did he ever discuss with you at any time, any changes in inventory? A. No, sir.

Q. Did he ever discuss with you at that time, any adjustments of accounts payable?

A. No, sir. [4846]

Q. Did he ever discuss with you at any time the matter of depreciation, the way he handled it?

A. No.

Q. Did he ever discuss with you the matter of a negative inventory? A. No, sir.

Q. Did you know that he had, or was supposed to have, a negative inventory? A. No, sir.

Q. Did Mr. Taylor ever discuss with you the matter of negative cash? A. No, sir.

Q. Did Mr. Taylor ever advise you at any time how he was keeping the books and records?

A. No, sir.

Q. In regard to the financial statements submitted to banks, did Mr. Taylor usually go over those statements with you before they were submitted to the banks?

Mr. Moriarty: Objected to as not proper re-

(Testimony of Hans Forster.)

buttal, it has been all gone over time and time again in the case in chief.

The Court: This is rebuttal to Mr. Taylor's testimony following Mr. Forster's case, and because of the length of time that has expired, I am not going to [4847] sustain the objection.

Mr. Moriarty: It was part of Mr. Forster's case in chief, that he never saw the books, or looked at them, and that Mr. Taylor didn't present these matters to him, and presented the bank statements without Mr. Forster ever seeing them.

The Court: This answer—the question and answer will be only related insofar as it refers to the testimony of Mr. Taylor and Mr. Erickson.

Mr. Griffin: Correct, and this is directed only to the testimony of Mr. Taylor.

Q. (By Mr. Griffin continuing): Repeating the question:

Did Mr. Taylor go over the financial statements with you before he submitted them to the banks?

A. No, sir.

Q. Did you ever know until this investigation started, or the time of this trial, that Mr. Taylor would give you correct financial statements and the bank a different financial statement for the same period? A. No, sir.

Mr. LeSourd: Objected to, your Honor.

Mr. Griffin: Just a moment.

Mr. LeSourd: Objected to as argumentative and an improper statement of the facts. [4848]

(Testimony of Hans Forster.)

The Court: I don't recollect that there was any testimony directly to——

Mr. LeSourd: (Interposing) That is right. He is going back to his own cross-examination of Taylor, not Taylor's testimony on direct.

The Court: The only part I recollect, Mr. Griffin, relates possibly to the transactions of the Stanwood Bank.

Mr. Griffin: Yes, December 31, 1935.

The Court: Wasn't that on cross-examination?

Mr. Griffin: Yes, but Mr. Taylor came back and explained in detail upon redirect as to what the banks wanted, and why he did it. He even almost delivered a lecture on it.

The Court: Well, I will again confine this question to the—or, answer, rather, and the question to the transactions relating to financial statements submitted then to the banks in the early '30s. I believe it was the Stanwood Bank.

Mr. Griffin: His testimony also applied to the statement submitted to the Peoples Bank.

Mr. LeSourd: There is other evidence of duplicate financial statements. The only ones in the '30s were fully explained already, if the Court please.

Mr. Griffin: Mr. Taylor explained in detail [4849] what the purposes of the financial statements to the banks were, and I asked impeaching questions for the witness we will have, Mr. Ellis.

Mr. LeSourd: My original objection is the vice in the assumption that this is something applying

(Testimony of Hans Forster.)
to all these financial statements, which certainly is not correct.

The Court: The question, as put, to the best of my recollection, would cover the incident of a transaction in the earlier years, rather than the later.

Mr. Griffin: All right, I am willing to limit it to that.

Q. (By Mr. Griffin): The question was, Mr. Forster:

As of——

Mr. LeSourd: (Interposing) Just a moment. I would like to make another objection, if your Honor please. This is further improper rebuttal in that the evidence concerning those earlier years was not relevant to the issues of the case. It was admitted by the Court, as I understand it, on the theory that it in some way affected the credibility, or might affect the credibility, of Mr. Taylor, which, of course, we feel it did not in any way, and as I understand, [4850] the law——

The Court: (Interposing) Excuse me a moment, on that; or, of course, to affect the credibility of Mr. Forster.

Mr. LeSourd: Well, if that is the basis——

The Court: (Interposing) When credibility is attacked, it is likewise to bring out evidence, of course, that may rehabilitate it.

Mr. LeSourd: Well, our understanding of the law is, your Honor, that in such a case, no rebuttal evidence is proper, and that he is bound by the

(Testimony of Hans Forster.)

answers of the witness, and we will object on that ground.

The Court: Objection overruled.

Q. (By Mr. Griffin continuing): The question is, Mr. Forster:

Dealing now with the—particularly with the statements of 1935 and 1937 in evidence, did you know that Mr. Taylor was giving one financial statement to the banks and a different statement to you covering the same period of time?

A. No, I didn't.

Mr. LeSourd: Our objection stands to this question, also.

The Court: Yes, it is understood. Your answer was? [4851]

The Witness: I didn't know.

Q. (By Mr. Griffin): Did Mr. Taylor attend with you several meetings with the bankers, Peoples Bank, in connection with the application for the loan and a loan eventually made, a building fund of the Alpine Ice Cream Company?

Mr. Moriarty: Objected to as not proper rebuttal.

The Court: This relates to the——

Mr. Griffin: (Interposing) Testimony of Mr. Taylor that he only attended one meeting.

The Court: Objection overruled.

A. Yes, I attended several meetings with Mr. Taylor with officers of the Peoples Bank.

Mr. LeSourd: I will object to the statement he attended only one meeting. That is contrary to his testimony. He attended one meeting on a two hun-

(Testimony of Hans Forster.)
dred thousand dollar loan, and other meetings on other loans on other amounts.

The Court: The statements of counsel again, as to what the evidence is, are not to be considered by the Jury as being evidence.

They must rely upon their own recollection.

Now, the statement was made and the answer in response and an objection made. It might be well to [4852] restate the question now, Mr. Griffin.

Mr. Griffin: Thank you.

Q. (By Mr. Griffin): Did Mr. Taylor attend several meetings with the various officials of the Peoples Bank in connection with the proposed loan referred to here as the building loan for the Alpine Ice Cream Company?

Mr. Moriarty: Objected to as repetitious and not proper rebuttal.

The Court: All right, why?

Mr. Moriarty: For the simple reason that this party has testified to everything that Mr. Taylor did on direct, and Mr. Taylor has testified what he did on direct, and the number of times that Mr. Taylor was present at meetings, and this is an attempt to revise what Mr. Taylor said in opposition to Mr. Forster. The Jury is to weigh that, if your Honor please. Said twice doesn't add to it.

The Court: Many things have been said many more times than that. Members of the Jury: of course, the testimony is for your consideration, and the repetition of a—there may be some repetition. It may be because the Court doesn't recollect

(Testimony of Hans Forster.)

whether or not it has been received, and I am not trying to permit repetitious testimony. [4853]

However, in this case, Mr. Taylor testified as to matters which were admitted as to credibility of the defense, and also the testimony of Mr. Forster. As part of that testimony, one of the issues involved was meetings, and the Court believes it is permissible in this type of rebuttal to meet that, and to confine the issue as we are seeking to. You may proceed.

Q. (By Mr. Griffin continuing): Do you have the question? A. Yes; he did.

Q. When did you first learn that the books and records in the possession of Mr. Taylor over these years had been by Mr. Taylor left at the Issaquah Creamery?

A. After he delivered them to Issaquah.

Q. Do you recall whether that was before or after your last visit or trip with Mr. Taylor and Mr. Erickson to Finstad and Utgard?

A. It was after we made the trip to Conway and before Mr. Taylor left for McNeil Island

Q. When did you first learn that changes in accounts payable, milk drafts, and the inventory had been made in the books—the journals—of Mr. Erickson?

Mr. Moriarty: Objected to as not proper rebuttal. If that hasn't been testified to ten times on direct, I miss my guess. [4854]

Mr. Griffin: You miss it on this witness.

Mr. Moriarty: Then it is nine times.

(Testimony of Hans Forster.)

The Court: Well, again the Court has to consider this in connection with the testimony that was not in issue at all at the time Mr. Forster first took the stand. Objection overruled.

A. The first time I learned about it is when after the investigation started, and Mr. Gorans, or this accounting firm, checked over the books at Issaquah and that night, Mr. Erickson came up to the house, and that is the first time he told me about the changes he made, and he said——

Q. (By Mr. Griffin interposing): Just a moment. And is that the first time you knew about it?

A. That is right, yes.

Q. With reference to Exhibit 181, which is a Klopfenstein check, dated August, 1947, at the time that check was issued, where were you?

A. I was in Switzerland, visiting my parents.

Mr. Moriarty: There has been no issue on that.

The Court: I am inclined to sustain that objection.

Mr. Moriarty: And I move the answer be stricken. It is an attempt to re-emphasize testimony. Mr. [4855] Erickson testified he was in Switzerland.

The Court: I am inclined to sustain the objection.

Mr. Moriarty: It is just an attempt to get a story before the Jury.

Mr. Griffin: I may say, if it please the Court, that I think this will be the shortest rebuttal that one could have in a three months' case, and it

(Testimony of Hans Forster.)

would be over now, except for those kind of statements.

Mr. Moriarty: At the same time, we should follow the——

Mr. Griffin: (Interposing) The question was asked, due to the question of Mr. Maxwell, with whom, I understand, Mr. Moriarty is associated.

Mr. Moriarty: That is correct.

Mr. Griffin: (Continuing) Seated back in his chair, "As a matter of fact, didn't Mr. Forster instruct you to enter this invoice in the books?"

Mr. Erickson has testified he thinks at that time Mr. Forster was in Switzerland. I established by this witness, if I may, that at that time he was in Switzerland, and it would have been a long conversation overseas.

Mr. Moriarty: If you asked that question, if he gave the instructions, I think it might be stretched [4856] to proper rebuttal. Whether he was in Switzerland or not, is beside the point.

Mr. Griffin: I wait the Court's ruling.

The Court: The question has been answered, and the Jury has heard argument of counsel.

You may proceed.

Q. (By Mr. Griffin): Mr. Forster, at these lunches at your home in Issaquah on these Saturdays when Mr. Taylor was out there over the years, did you discuss business with Mr. Taylor?

Mr. LeSourd: Objected to as improper rebuttal.

Mr. Moriarty: Same objection.

The Court: Objection sustained.

(Testimony of Hans Forster.)

Mr. Griffin: May I inquire why, if the Court please?

The Court: Is it preliminary? It might be.

Mr. Griffin: No, it is not. It is my last question. Mr. Taylor testified that they never discussed business at lunch.

The Court: I think I recall Mr. Forster testifying, however, as to their meetings at lunch.

Mr. Griffin: He did, but——

The Court: (Interposing) And I think to permit, the issue having been gone into, it is not a [4857] subject for rebuttal at this time.

Mr. Moriarty: It is not material, anyway, whether they discussed business at lunch.

The Court: The Court has ruled.

Mr. Griffin: I accept the Court's ruling.

That is all.

Cross Examination

Q. (By Mr. Moriarty): Mr. FOSter——

Mr. Griffin: (Interposing) The name is Mr. FORSter.

Q. (By Mr. Moriarty continuing): ——did you at any time during your entire business connection with these various business enterprises ever look at an inventory?

A. Do you mean at the amount?

Q. At an inventory?

A. Well, I knew what—I seen some of the inventory in the warehouses. I never counted it. I never helped make up the inventory, if that is what you mean, sir.

(Testimony of Hans Forster.)

Q. After it was made up, did you ever inspect it at any time? A. No.

Q. Was that because you had the inventory in your [4858] head and didn't need to look at the statement? A. No, I didn't.

Q. Did you at any time look at a bank statement that you signed?

Mr. Griffin: Objected to as not——

Mr. Moriarty: (Interposing) During the period that you have——

Mr. Griffin: (Continuing) Objected to as not recross; gone into with the witness and his signatures on cross-examination as to each statement.

Mr. Moriarty: This is proper cross-examination.

The Court: Objection overruled.

Q. (By Mr. Moriarty continuing): Answer the question, please.

A. What do you mean by "bank statement"?

Q. The bank statement that you answered the question by Mr. Griffin on.

A. You mean my financial statements?

Q. Your financial statements, yes.

A. The only time I looked at it after Mr. Taylor and myself gave it to the bank and they asked me questions about it. That is when I looked at it. I didn't look at it before. I didn't see it until Mr. Taylor took me to the bank and the bank called me in [4859] and we go over it, and if there was something they didn't understand and if they couldn't figure it out for me, what the amount was, or what the deal was, I called Mr. Taylor in.

(Testimony of Hans Forster.)

Q. You were never there alone with the bank statement without the assistance and help of Mr. Taylor, was that your answer?

Mr. Griffin: I submit that was not the answer. I object to the form of the question.

The Court: Objection overruled.

Mr. Moriarty: His answer was——

The Court: (Interposing) I overruled the objection.

Q. (By Mr. Moriarty continuing) You may answer the question.

A. I think we probably discussed some of the financial statements in the bank without Mr. Taylor being there, yes.

Q. Did you ever look at the totals of each bank statement that was furnished to the bank?

A. I think I probably have looked at the net worth. I don't think I ever added any of them up.

Mr. Moriarty: That is all.

Cross Examination

Q. (By Mr. LeSourd): Mr. Forster, in connection with the 1949 Issaquah return which you previously testified you objected to the profit figures shown by Mr. Taylor, is it your testimony you signed the income tax return for that year without even inquiring as to whether any changes or mistakes—changes had been made or mistakes found?

Mr. Griffin: I object to that as not recross. Practically the specific question was asked on cross-examination in regard to that.

(Testimony of Hans Forster.)

Mr. LeSourd: Your Honor, he testified a few minutes ago that he signed this return for this year without any further conversation. I believe I am entitled to ask this question.

The Court: The question was, did he show any work sheets or changes relative to the change in the accounts payable?

Mr. LeSourd: Well, also, whether he had any discussions at the time, your Honor.

The Court: I think he said he never discussed it at all.

Mr. LeSourd: And that is what my question is directed to.

The Court: Do you wish to restate the question? I think we may have lost it. [4861]

Mr. LeSourd: May it be read?

The Court: All right. Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. That is right.

Mr. LeSourd: That is all.

Mr. Keesling: No questions.

The Court: That is all, Mr. Forster.

(Witness excused.)

Mr. Brody: Mr. Strack? [4862]

PHILLIP A. STRACK

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Mr. Strack, as a bank officer, will you accept and rely on a financial statement submitted by a borrower if you knew that the borrower had outstanding for the same date a different statement?

Mr. LeSourd: Objected to.

Mr Moriarty: Objected to as not proper rebuttal, and hypothetical.

The Court: Objection sustained.

Mr. Brody: Your Honor, on Mr. Taylor's redirect examination, he expressed his views at length as to the purpose of financial statements and if rebuttal is not permitted as to those views, he becomes the final authority on that.

We want to ask the banker——

The Court: (Interposing) What are you relating this to?

Mr. Brody: I am relating it, your Honor, especially to the statement of February 28, 1948, concerning which there was testimony that $100,000 [4863] had been removed from accounts receivable into cash, and that that matter had been made clear, and that it was for the benefit of the bank and convenience of the bank examiners.

The Court: You are now asking for expert testimony, aren't you?

(Testimony of Phillip A. Strack.)

Mr. Moriarty: What they are doing, in effect, is elevating Mr. Taylor to a banker, and opposing him with hypothetical questions.

Mr. Brody: Mr. Taylor testified with respect to the statements in the '30s that different statements had different purposes; that credit purpose statements were different from income tax statements.

The Court: I will sustain the objection.

Q. (By Mr. Brody): Mr. Strack, did Mr. Taylor ever disclose to you that the statements which he submitted in any respect differed either from the books of the company involved, or any other outstanding statements?

Mr. Moriarty: Objected to as not proper rebuttal.

The Court: Objection overruled.

Mr. Moriarty: It can be "yes" or "no".

Mr. LeSourd: Just a moment. I will object, your Honor, as assuming something not in evidence. The [4864] testimony is that the statements were taken from the books.

The Court: The Court will overrule the objection.

Mr. Brody: May the question be read, your Honor?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. No, he did not.

Q. (By Mr. Brody): Now, Mr. Strack, will you

(Testimony of Phillip A. Strack.)

state, on a financial statement, what is meant by "cash"?

Mr. Moriarty: Objected to as not proper rebuttal.

Mr. Brody: Your Honor, this goes again to the statement of the cash on hand, and accounts receivable. I simply wish to ask this witness whether accounts receivable and cash may be interchanged.

Mr. Moriarty: You can't, on cross examination, bring out answers that you wish, and then present rebuttal witnesses.

The Court: Objection sustained.

Mr. Brody: I believe that this matter was gone into on redirect, your Honor. [4865]

Mr. LeSourd: Well, it was opened on cross-examination.

The Court: There is some restriction. We cannot open this up to further rebuttal. I feel it may open up further testimony and I don't propose to do that unless it is absolutely necessary.

Q. (By Mr. Brody): Mr. Strack, did you attend with Mr. Taylor more than one conference on the subject of a construction loan for the Alpine Ice Cream Company? A. Yes, I did.

Mr. Brody: No further questions.

Mr. Moriarty: No cross-examination.

Mr. LeSourd: No cross-examination.

Mr. Keesling: No cross-examination.

The Court: That is all, Mr. Strack.

(Witness excused.)

Mr. Brody: Mr. Donaldson. [4866]

FRANK B. DONALDSON

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Mr. Donaldson, did Hicks Taylor ever disclose to you that there was any difference between any financial statement which he submitted to the Peoples National Bank and the books and records of the company involved, or any other outstanding statement?

Mr. LeSourd: Same objection, your Honor, improper rebuttal. Assuming facts not shown.

The Court: The objection may show. Objection overruled. A. No, he did not.

Q. (By Mr. Brody): And did Hicks Taylor attend with you more than one meeting at the Peoples National Bank concerning a construction loan for the Alpine Ice Cream Company?

A. I was present at several discussions on that building account, yes.

Q. And at which Mr. Taylor was present?

A. Mr. Taylor, Mr. Forster and Mr. Strack.

Mr. Brody: 123, please.

(Whereupon, Exhibit was handed to Mr. Brody by the Clerk.)

Q. (By Mr. Brody): Mr. Donaldson, I will show you Plaintiff's Exhibit 123, a financial statement of Hans Forster dated February 29, 1948, in which the entry for cash on hand and in banks is listed as $293,848.11. Will you state, as a banker,

(Testimony of Frank B. Donaldson.)
what the significance is to you of the entry "cash on hand and in the banks"?

Mr. Moriarty: Just a moment.

Mr. LeSourd: Objected to.

Mr. Moriarty: Objected to as not proper rebuttal.

The Court: Objection sustained.

Mr. Brody: Once more I would like to bring to the Court's attention——

The Court: (Interposing) You may make your record.

Mr. Brody: Yes. That Mr. Taylor stated——

Mr. Moriarty: (Interposing) Just a moment, if your Honor please.

The Court: State the nature of the offer to the record.

Mr. Brody: The nature is that this was [4868] gone into on redirect on the testimony of Mr. Taylor and the significance of cash was explained and an opinion given as to the nature of cash on that sheet.

Mr. Moriarty: Same objection.

The Court: Objection overruled. I mean, sustained.

Mr. Brody: No further questions.

Cross Examination

Q. (By Mr. Moriarty): You are the same Mr. Donaldson that appeared before?

A. Yes, sir.

Mr. Moriarty: No further questions.

(Testimony of Frank B. Donaldson.)

Mr. LeSourd: I have no questions.

Mr. Keesling: No questions.

The Court: That is all, Mr. Donaldson.

(Witness excused.)

Mr. Brody: Mr. Ellis. [4869]

QUENTIN ELLIS

upon being called as a witness for and on behalf of the Defendant Forster, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name, and the spelling of your name, please.

The Witness: Quentin Ellis, Q-u-e-n-t-i-n E-l-l-i-s (spelling).

Q. (By Mr. Brody): Will you state your name, Mr. Ellis? A. Quentin Ellis.

Q. And what is your address?

A. Home address?

Q. Yes.

A. 617 Whitworth Lane, Renton, Washington.

Q. And where are you employed?

A. Peoples National Bank.

Q. In what capacity?

A. I am assistant vice-president and manager of the credit department at the main office.

Q. Now, did you have occasion in the year 1948 to discuss with Mr. L. Hicks Taylor, a financial statement of Hans Forster?

Mr. LeSourd: Objected to as—— [4870]

(Testimony of Quentin Ellis.)

Mr. Moriarty: (Interposing) Objected to as not proper rebuttal.

Mr. LeSourd: This is a matter they opened up in cross-examination of Mr. Taylor.

They are bound by that, because it is not proper rebuttal to put on any further testimony.

Mr. Moriarty: And certainly this is no proper rebuttal of the Government's case, no matter what the quarrel is between the defendants.

The Court: I will concede that, Members of the Jury, and I will advise the Jury it is not rebuttal of the Government's case.

Mr. LeSourd: They are not entitled to do it by rebuttal, your Honor.

The Court: Directly not rebuttal of the Government's case. Now,——

Mr. Moriarty: (Interposing) We are trying to keep the record clear, if your Honor please.

The Court: I am, too, Mr. Moriarty.

Mr. Moriarty: Thank you.

The Court: Now, you may proceed.

Q. (By Mr. Brody continuing): Did you have occasion, Mr. *Donaldson,* in the year 1948, to discuss with Mr. L. Hicks Taylor a financial statement of Mr. Hans Forster? [4871] A. Yes, I did.

Mr. LeSourd: Objected to as improper rebuttal.

The Court: Objection overruled.

Q. (By Mr. Brody): And do you recall when that discussion took place?

Mr. LeSourd: Same objection.

(Testimony of Quentin Ellis.)

Mr. Moriarty: Same objection on the part of the Government.

The Court: There may be a continuing objection to this witness, if you wish.

Mr. Moriarty: We don't know what he will testify to and his name wasn't mentioned except in cross-examination, and Mr. Taylor didn't name Mr. Ellis, but was asked if he knew——

Mr. Cox: (Interposing) That is correct.

Mr. Moriarty: If I could ask if he knew Mr. Ellis and then bring the man in, it would be a new rule of evidence.

Mr. Griffin: I don't think that is a proper statement, so far as the Court is concerned, and we are not making new rules of evidence.

Mr. Moriarty: I didn't mean to make any statement disrespectful to the Court: I do say that you yourself asked the question if it was Mr. Ellis and Mr. [4872] Taylor said he didn't know or recall it was Mr. Ellis. Now, calling Mr. Ellis to rebut Mr. Taylor's testimony is completely out of order.

Mr. Griffin: May I address the Court, Mr. Moriarty?

Mr. Moriarty: You may, Mr. Griffin.

Mr. Griffin: On Mr. Taylor's testimony on conference with the credit officer at the Bank, I tied him to one man. He didn't know his name was Ellis. Then I placed impeaching questions, ground for impeaching, on A-2.

Mr. Cox: It is not in evidence.

Mr. LeSourd: If your Honor please, on the

(Testimony of Quentin Ellis.)

questions outside of the issue, Counsel is bound by the answer and we object. It is improper rebuttal, and ask to have a continuing objection to questions on this line.

The Court: I am going to excuse the Jury and have you make an offer of proof, and the Court will consider it. Ladies and Gentlemen of the Jury:

We will now take a short recess. It will probably be the regular recess for the afternoon session. The Court calls your attention to the admonition given you on similar occasions, and you may heed it on this occasion, if you will. [4873]

(Whereupon, the Jury retired from the courtroom.)

The Court: It is stipulated the Jury have left the courtroom?

I will ask Counsel to be a little cautious in comments, and you may proceed.

Mr. Brody: The offer of proof will be, in substance, that Mr. Ellis phoned Mr. Taylor May 5, 1948, and discussed with him the financial statement dated February 29, 1948, which had been submitted to the bank; that this was not a secret conference in any manner; that the specific items in the statement were discussed, and among them was the item of cash on hand, and in bank of $293,-848.11; that Taylor stated to the witness that of the cash on hand and in the banks a part of it was Hans's personal cash, and the remainder belongs to the Alpine Dairy operation.

(Testimony of Quentin Ellis.)

The Court: Now, do you happen to have a transcript there, the testimony of Mr. Taylor?

Mr. Brody: Yes, here is the testimony of Mr. Taylor, which your Honor may wish to examine, and Mr. Griffin specifically examined for purposes of impeachment as to whether or not the conversation was had, and whether or not the statement as to the amount of cash on hand was made. The direct questions are this:

"Question: I will ask you on May 5, 1948, at the [4874] Peoples National Bank in your explanation of the assets shown on the statement of February 28, 1948, you did not state to Mr. Ellis in substance and effect that the cash on hand and in banks of $293,000—of $293,848.11—was not part Alpine Dairy operation, and the remainder personal cash of Hans Forster?"

The answer: "No, I have no recollection of it."

"Question: Would you say that you did not so state on that occasion, on that date, the substance of that question and answer to Mr. Ellis?

"Answer: I would say that I did not say that."

Mr. Griffin: May I suggest the background of that was the witness's testimony that he had been called secretly to a conference at Peoples National Bank to discuss with the credit manager this particular financial statement with which we are dealing, upon which I laid my foundation for impeachment?

The Court: All right. Now, what are the objections? Mr. Moriarty?

(Testimony of Quentin Ellis.)

Mr. Moriarty: In the first place, our objection is that it is not proper rebuttal to the Government's case, and, secondly, it is my recollection [4875] of the evidence that Mr. Taylor did refer to a secret call to the bank. He didn't recall the party or name him, and then further, in cross-examination, these questions were propounded—about his secret call to the bank, the substance of it, and the cross-examination was about why it was secret, and along that line, as if there was some reason for the secrecy.

Now, if I can propound an impeaching question and then call a man who happens to be in the bank to answer the impeaching question, I don't see how that can be rebuttal to an issue.

Mr. Brody: Your Honor, as to the first point Mr. Moriarty raised——

The Court: (Interposing) I will hear Mr. LeSourd's objection.

Mr. LeSourd: Your Honor, in the first place, this is a subject not touched upon in the direct examination of Mr. Taylor. Your Honor saw fit in this case to permit the cross-examination of Mr. Griffin of Mr. Taylor to go beyond the scope of the direct examination. There are certain Circuits in the Country that permit that under certain circumstances. The Ninth Circuit is not one. But, those Circuits that do permit that for purposes only of testing credibility also provide where they do permit it, that the answer that is given, where you go beyond the scope of direct [4876] is binding on the

(Testimony of Quentin Ellis.)

cross-examination, and he cannot put on rebuttal evidence to contradict it.

That is the basis of our objection.

Mr. Brody: Your Honor, Mr. Moriarty's first objection is that it does not go to the Government's case. Of course, rebuttal at this time is matters raised in the case of the other two defendants, and not of the Government's case. Those matters were raised on our defense. As to whether or not Mr. Ellis is definitely not named on the time or place stated, I think they were quite clearly stated in the question. The question includes the elements and Mr. Taylor responded to it.

The Court: The objection, of course, that Mr. LeSourd raises is that the matter was brought out on cross-examination and made the basis of impeachment on a matter not covered. That is your objection, Mr. LeSourd?

Mr. LeSourd: That is right.

The Court: And that is the issue. Now, I might state, as I have indicated before, that much of the cross-examination of Mr. Taylor was extended, you might say, or permitted from my point of view on the ground of the challenge made to the defense of Mr. Forster, much of which was involved in the attack he has made on [4877] the transactions subsequent to the Indictment.

Now, that was the basis of the extended—the Court's permission of extended cross-examination, not on the issues as raised by the Government's case.

(Testimony of Quentin Ellis.)

Mr. Moriarty: In any event, it is not proper rebuttal.

The Court: I am inclined to think it is beyond the scope of proper rebuttal.

Mr. Griffin: May I suggest the financial statements referred to were placed in evidence by the Government? Mr. Taylor testified, if I am not mistaken, with reference to the preparation of the financial statements, and the conferences in regard thereto. We went into the matter on cross-examination and specifically upon his volunteered statement, I remember it so well, that he was called to this secret meeting.

The Court: I recall that testimony.

Mr. Griffin: Then, upon that basis, I laid the foundation specifically, and so stated at the time, of the impeachment upon that testimony which, of course, goes to his credibility.

The Court: Yes. Now, it grew out of, as I recall the testimony, on the cross-examination, of the response of Mr. Taylor relative to a secret meeting, and then, without his knowing who the person was, subsequently [4878] in a later point on cross-examination, you brought in then the specific meeting, and asked if that wasn't the meeting, and the details were gone into.

Mr. Griffin: Right.

The Court: And I believe it is improper and the Court will sustain the objection.

Mr. Brody: I think there is one other ground

(Testimony of Quentin Ellis.)

on which it may be admissible, your Honor, and that is this:

That one of Mr. Taylor's defenses is that he knew only those matters which were contained in the books of Alpine Dairy, Issaquah Creamery, and the other business enterprises.

It is really the main heart of his defense that he didn't know about Hans Forster's purely personal affairs, and personal cash and personal securities, and the holdings, and personal bank accounts.

Here we have a statement where he states to a witness that of certain assets listed on a financial statement——

The Court: (Interposing) Maybe the Government might use this witness for that purpose, but I don't know that you can.

Mr. Moriarty: I was going to point out that this was impeaching the co-defendant's knowledge, and the [4879] Government claims both had knowledge at all times and both were thoroughly familiar with it.

Mr. Brody: It is vital to our case that the Defendant Taylor had that knowledge, and acted on the basis of that knowledge, or failed to act on it.

Mr. Moriarty: Whether they had it or not, we only contend that they failed to disclose it on their income tax returns.

The Court: It came in on an item of cross-examination.

Mr. Griffin: The Court will remember this as well, and perhaps take judicial notice: I had to

(Testimony of Quentin Ellis.)

cross-examine Mr. Taylor on behalf of the Government because the Government didn't do it.

Mr. Cox: That is your version.

Mr. Griffin: That is right.

The Court: I will not make a comment on that. The Court will adhere to the ruling made and we will now take a recess.

Have you completed your offer of proof?

Mr. Griffin: Is it completed?

Mr. Brody: I think so.

Mr. Griffin: That would be the offer of proof, to which the witness on the stand would answer in the affirmative. [4880]

Mr. Brody: That is correct.

The Court: Does that complete this witness's testimony?

Mr. Brody: That completes this witness's testimony.

The Court: And I take it, there is no cross-examination.

Mr. Griffin: I wouldn't be surprised if the Government cross-examines.

The Court: I think Mr. Ellis may be excused then.

(Witness excused.) [4881]

* * * * *

VERN EGENESS

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Mr. Egeness, are you presently the owner of any interest in Finstad and Utgard? A. No, I am not.

Mr. Moriarty: Objected to as not proper rebuttal.

Mr. Cox: No one said he was.

The Court: Objection sustained, and the answer will be stricken.

Q. (By Mr. Brody): Mr. Egeness, have you at any time since the sale of your interest and that of Mr. Grant and Mr. Cook and Mr. Roberts to Mr. Forster in 1943, have you at any time since then owned an interest in Finstad and Utgard?

Mr. Cox: Objected to as not proper rebuttal, calling for a conclusion of the witness.

The Court: Calling for what?

Mr. Cox: Calling for a conclusion of the witness. This matter was gone into thoroughly, if the Court please, in the Government's case, and was amply covered [4883] by Mr. Forster's counsel at that time.

The Court: I think the question should be more specific.

Q. (By Mr. Brody continuing): Did you, in 1943, in the presence of Hans Forster and Hicks Taylor, enter into any agreement for the purchase

(Testimony of Vern Egeness.)

of one-fourth interest in Finstad and Utgard by you?

Mr. Cox: Same objection.

The Court: Objection overruled. You may answer.

The Witness: Go ahead.

The Court: You may answer.

The Witness: Would you repeat that again?

Mr. Brody: May the question be read, your Honor?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

A. No.

The Court: Or any interest?

Q. (By Mr. Brody): Or any interest?

A. No.

Q. Now, showing you Defendants' Exhibit A-44,—— [4884]

Mr. Moriarty: I didn't hear you, Mr. Brody.

Q. (By Mr. Brody continuing): Referring to Defendants' Exhibit A-44, on the top page, right-hand column, I will call your attention to the pencilled figure "1" written into inventory, from which it appears to read $12,167.47. Did you make that pencilled "1"?

Mr. Cox: Just a moment, please. Objected to as not proper rebuttal.

This was another matter gone into on cross-examination of Mr. Taylor, and beyond the scope of the direct examination, and a matter upon which

(Testimony of Vern Egeness.)

counsel for Mr. Forster are not entitled to offer rebuttal testimony for impeaching purposes.

The Court: May I see the exhibit?

(Whereupon, exhibit was handed to the court.)

The Court: I will ask Counsel to refresh the Court's recollection on this matter.

Mr. Griffin: This is the matter they went into on direct, and Mr. Taylor testified that these changes were not made by him, but by Mr. Egeness.

Mr. Cox: On the contrary, we did not touch any matters on direct of Finstad and Utgard, other than the matter of the stock to Mrs. Finstad. The matter was broached by Mr. Griffin. [4885]

Mr. Moriarty: And the document identified by Mrs. Simonson.

Mr. Brody: That is correct.

Mr. Cox: That doesn't make it proper rebuttal of Mr. Taylor on his case.

Mr. Brody: I seem to recall on his direct case he went into matters on that document, did he not?

Mr. Cox: Not on direct.

Mr. Griffin: I may say, I don't have any recollection of asking any questions of any changes by Mr. Egeness on the records of Finstad and Utgard.

Mr. Brody: You didn't ask if Mr. Egeness made it, but as to changes made.

Mr. Griffin: Taylor testified Egeness made it.

Mr. Cox: In response to your question, Mr. Griffin.

(Testimony of Vern Egeness.)

The Court: Mr. Reporter, will you read the question?

(Whereupon, preceding question was read by the reporter.)

The Court: This was covered in the examination of Mr. Taylor?

Mr. Brody: Yes, sir.

Mr. Cox: On cross-examination. Of course, it is our position that the matter now as then is [4886] not relevant to the issues in the case.

The Court: The Court will sustain the objection.

Q. (By Mr. Brody continuing): Now, I will call your attention, Mr. Egeness, to Defendants' Exhibit A-122, headed 1947 bonuses paid January, 1948.

Mr. Cox: Same objection, if the Court please.

Mr. Moriarty: 1947.

Q. (By Mr. Brody continuing): 122——

The Court: (Interposing) The question was not put, as yet.

Mr. Cox: I do not concede counsel can ask a proper question to the document since objection has been made as to the last one. It is another matter gone into on cross-examination of Mr. Taylor and not touched upon on direct.

Mr. Brody: The question was not put, but the document was offered by Mr. LeSourd.

Mr. Cox: On redirect, after opened up on cross. It was offered for a limited purpose.

The Court: Objection sustained.

Mr. Griffin: I will have to ask your Honor to

(Testimony of Vern Egeness.)

excuse the Jury then to make an offer of proof in the [4887] record.

The Court: All right.

Mr. Griffin: Sorry.

The Court: This question relates to—well, all right. Members of the Jury, we will now take another recess, and the Court will call you back as soon as we are able, and ask you to heed the admonition given you on similar occasions.

(Whereupon, the Jury retired from the courtroom.)

Mr. Griffin: Does your Honor have A-122?

The Court: They are looking at it.

Mr. Griffin: Oh.

A-122 was offered in evidence by Mr. Taylor.

The Court: Upon redirect.

Mr. Griffin: Mr. Taylor testified to the alteration of ten thousand dollars, or change of ten thousand dollars, he had charged to bonuses. He was examined in detail by his own counsel as to the fact that there were individuals or parties entitled to bonuses from various districts and including Snohomish County, as he testified.

We offer to prove by the witness on the stand, with reference to this Exhibit A-122, and the testimony of Taylor, that with reference to this ten thousand dollars that he used for accounts payable as charged to [4888] bonuses, the bonus—the total bonus was $2,139.55, and that the named parties,—individuals—upon this exhibit are the only ones that were entitled to bonuses and the amount is

(Testimony of Vern Egeness.)

specified to which each is entitled, and then Mr. Taylor thereby used up some $7,860.45, chargeable, he says, to bonuses, and the cold record shows that such was not the fact; and as to Exhibit A-44, Mr. Taylor having testified in effect changes shown thereon were made by the witness on the stand, we propose to show by the witness on the stand that such changes were not made by Mr. Egeness and my position is again, as long as your Honor is ruling, in regards to Mr. Ellis, that this is highly prejudicial to the defense of Mr. Forster.

We didn't bring this Indictment charging these defendants individually. It is the way they are charged by the Government, and we are entitled to defend against the claim of Mr. Taylor, and this deprives us of the right so to defend, and leaves Mr. Taylor's statement to the Jury both in the Ellis matter and now in this one, undisputed that there is some eight thousand dollars of bonus payments made to other parties in 1947, and he was warranted in charging off ten thousand dollars in bonuses, and he was only warranted in charging $2,139.55, and that the [4889] change made in Document A-44 is just as prejudicial to the interests of Mr. Forster because Mr. Taylor stands unimpeached before the Jury in his statements where we have documents of record introduced by the Defendant, subject to explanation of this witness, particularly in the matter of bonuses that he did not make the change in the document. It leaves Mr. Taylor 100 per cent pure as far as the Jury is concerned

(Testimony of Vern Egeness.)

where we are not entitled to meet the falsity of his statement. All of the bonuses are upon this document for the year 1945.

Mr. LeSourd: Your Honor will remember the circumstances under which this document was put in. I offered it for the purpose of showing that the figure that Mr. Griffin had before him when he asked the question of Mr. Taylor on cross-examination of whether the total bonuses were not $500 for the year. Both of these matters are in the same connection as those we have been speaking about, not covered in direct examination, not relevant to this case, opened up in cross-examination, and I assume, permitted on the ground of credibility, or something of that sort. Mr. Griffin was the one who opened up the subject on cross-examination, and he is bound by the answers.

The Court: Does the Government have anything? [4890]

Mr. Moriarty: Well the Government feels that there was a statement by Mr. Taylor that these constituted—that these did not constitute all the bonuses at that time.

Mr. LeSourd: In redirect.

Mr. Cox: In redirect. I don't know that that was exactly what Mr. Taylor testified, either. He testified that there were more shippers than that whom, he thought, were entitled to bonuses.

He did not testifiy as to the number who were entitled to bonuses. The entire matter is collateral, and concerns a corporation not in the Indictment.

(Testimony of Vern Egeness.)

and not a matter establishing the defense of Mr. Forster and not a matter that the Government is charging.

Mr. Moriarty: I feel there is an inference that that document did not contain all the bonuses for 1947.

The Court: The document was introduced on redirect.

Mr. Moriarty: That is correct, produced by Mr. Taylor.

The Court: Identified on cross-examination.

Mr. Griffin: Let's get very straight upon this. I had Exhibit A-122 identified. No, pardon me. I endeavored to have A-122 identified by Mr. Taylor. It was [4891] not identified by Mr. Taylor.

I could not, therefore, offer it in evidence at that time.

The Court: It was marked on redirect?

Mr. Griffin: No; no, I had it marked, of course, before.

The Court: Just for identification.

Mr. Griffin: Yes. Mr. Taylor did not identify the document. I could not offer it, and I asked my first preliminary question as to whether the bonuses exceeded $500 to test his recollection and stopped at that point, because I had to wait for further identification. Without any identification then, Mr. LeSourd offered the document in evidence to which there wasn't any objection by anybody. That is the gist of it.

The Court: That is in accord with my recollec-

(Testimony of Vern Egeness.)

tion. The offer of proof will be rejected. You may call the Jury.

Mr. Brody: No further questions of this witness.

The Court: No further questions?

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. It is stipulated that the Jury and all defendants are present in the courtroom? [4892]

Mr. Griffin: Yes, sir.

Mr. Moriarty: Yes, your Honor.

The Court: The Court sustained the objection to the last question and I understand from counsel that there are no further questions on direct; is that correct?

Mr. Brody: That is correct.

The Court: Any cross-examination?

Mr. Moriarty: No questions.

Mr. Cox: We have no questions, your Honor.

The Court: No questions?

Mr. Cox: No questions.

Mr. Keesling: No questions.

The Court: That is all, Mr. Egeness.

(Witness excused.)

Mr. Brody: Mr. Schneider? [4893]

RAYMOND J. SCHNEIDER

upon being recalled as a witness for and on behalf of the Defendant Forster, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Brody): Mr. Schneider, were you present at any meeting of the incorporators or shareholders of the Renton Ice and Ice Cream Company in September, 1942, at which Mr. Taylor instructed Mr. Forster to deposit whatever proceeds he might obtain from the operation of the Renton Ice and Ice Cream Company in the Alpine Dairy account?

Mr. Cox: I object to the form of the question.

The Court: You said, was he ever present?

Mr. Brody: Was he present at such a meeting at which Mr. Taylor said——

The Court (Interposing): Objection overruled.

A. I never heard that, anything of that sort, no.

The Court: The question was, were you present?

Q. (By Mr. Brody): Were you present at such a meeting at which you heard that statement made?

A. I was present at all the meetings, but I [4894] never heard that statement made.

Q. Now, with reference to Plaintiff's Exhibit 212 and 212-A, the accounts payable notebooks or records of the Renton Ice and Ice Cream Company, did you keep those records up to date?

A. Yes, sir.

Q. Will you state how frequently entries were made in them?

(Testimony of Raymond J. Schneider.)

Mr. LeSourd: Objected to as not proper rebuttal, if the Court please. The matter was gone into thoroughly when the witness was on the stand.

The Court: You have covered it, haven't you?

Mr. Brody: I want him to explain his first answer. That is my only other question on this matter.

The Court: Objection overruled.

A. Daily, whenever we got an invoice in.

The Court: Would you read that question again, Mr. Reporter?

(Whereupon, preceding question was read by the reporter.)

Q. (By Mr. Brody): Now, with reference to Plaintiff's Exhibits 75, 76 and 77, photostatic copies of cashier's checks on the Peoples National Bank of Washington, Renton Branch, made out to Hans Forster, did you purchase those cashier's [4895] checks? A. Yes.

Mr. Cox: Objected to as not proper rebuttal and repetitious.

Mr. Brody: This is preliminary to one further question.

The Court: All right.

Q. (By Mr. Brody): Were you instructed to purchase those cashier's checks?

A. I was.

Mr. Cox: Same objection.

The Court: Are you meeting Mr. Taylor's statement?

Mr. Body: Yes, I am.

(Testimony of Raymond J. Schneider.)

The Court: Will you phrase it to cover it as you recall it?

Q. (By Mr. Brody): And did you voluntarily and of your own volition purchase those cashier's checks?

Mr. Cox: Objected to.

Mr. Brody: I am almost to the exact statement Mr. Taylor made.

The Court: If you will relate it to what Mr. Taylor's testimony was. I take it that is what you are [4896] meeting.

Mr. Brody: That is correct, your Honor.

The Court: Will you re-phrase it again?

Q. (By Mr. Brody continuing): Did you, of your own volition, and as of your own idea, purchase those cashier's checks to be made payable to Hans Forster?

Mr. Cox: I would object, if the Court please. I can also remember this witness' testimony when he was on the stand in the first place, and he thoroughly covered this, and said Mr. Taylor instructed him to do it all. They are not entitled to bring it back again.

Mr. Brody: This goes directly to a statement of Taylor that the witness, acting entirely independently and voluntarily, purchased the cashier's checks. I merely wish to show the statement to the witness and ask him what circumstances existed.

Mr. Cox: If there is any contradiction between the two witnesses, it already exists.

(Testimony of Raymond J. Schneider.)

The Court: Again, testimony of Mr. Schneider has been some time back, and the Court will not attempt to determine as between Counsels' positions which is correct. I will ask the Jury to relate this testimony only insofar as it may meet testimony of Mr. Taylor, and [4897] the objection is overruled, and if you wish, the reporter will read the last question.

Mr. Brody: Yes.

(Whereupon, preceding question was read by the reporter.)

A. No.

Q. (By Mr. Brody): Then, why did you purchase them?

A. Advised by Mr. Taylor.

Mr. Cox: Objection.

The Court: Objection overruled. I mean, sustained.

Q. (By Mr. Brody): Who instructed you to purchase them, Mr. Schneider?

Mr. Cox: Objection.

Mr. Brody: Your Honor, it simply goes——

The Court (Interposing): Oh, the objection is overruled.

A. Mr. Taylor.

Q. (By Mr. Brody): Who instructed you?

A. Mr. Taylor instructed me.

Mr. Brody: That is all.

Mr. Moriarty: No questions. [4898]

(Testimony of Raymond J. Schneider.)

Cross Examination

Q. (By Mr. Cox): Mr. Schneider, directing your attention to Exhibit 212, I believe you testified on Mr. Brody's examination that you made entries in this daily, or as frequently as invoices were received, is that correct?

A. That is correct.

Q. There are occasionally in here, are there not, periods when you went for some time and no items were entered?

A. If there were no bills received, that would be the case.

Q. That is, you never accumulated the bills?

A. I don't recall any time, unless I would be away a week and perhaps no one else did it.

Q. Well, directing your attention to a page in Exhibit 212 headed June 1, 1947, is there an item here relative to Union Oil? A. Yes.

Q. And when did you receive that item?

A. According to this, the date of it was the 10th.

Q. Now, that is the date you received and posted it, is it?

A. I dated these as of the date of the invoice, I [4899] believe.

Q. I see; you got then an invoice here sometime in May, dated May 10th, and you don't know on what date you made the entry then?

A. No, I wouldn't know now.

Q. Now, one, two, three, four, five, six, seven, eight, nine lines below that, Mr. Schneider, there

(Testimony of Raymond J. Schneider.)

is an entry of an invoice from someone named Kemp, is there? A. Yes.

Q. What was the date of that invoice?

A. The 7th.

Q. Where was the Kemp?

A. It was a Seattle firm, I think.

Q. Union Oil was also in Seattle?

A. Renton.

Q. That was in Renton? A. Yes.

Q. And the mail service is different, so that you get so much in advance that you have not posted, although it is dated three days later?

A. Would you care to have me tell you what I think it was?

The Court: The Court will sustain objection to that.

Mr. Cox: The Court sustains an objection?

The Court: Yes.

Q. (By Mr. Cox): It is your testimony, Mr. Schneider, that you put every obligation for which the Renton Ice and Ice Cream Company owed into Exhibit 212 and 212-A?

A. Everything we bought, and we were billed for, I would say went in there as it came in, yes. That was the intention.

Q. But if you owed obligations which were not billed for on a regular basis, they were not entered?

Mr. Griffin: Objected to as not proper recross examination.

The Court: Objection overruled.

A. That is possible——

(Testimony of Raymond J. Schneider.)

Mr. Cox (Interposing): That is all.

A. (Continuing): ——if we had no billing.

The Court: That is all, then. There is nothing further.

Mr. Brody: No further questions.

Mr. Griffin: No recross.

(Witness excused.)

Mr. Griffin: Mr. Kachlein?

The Court: You have been sworn.

Mr. Griffin: Mr. Kachlein should be sworn in the presence of the Jury, if the Court please. [4901]

The Court: If you wish, you may be sworn.

GEORGE F. KACHLEIN, JR.

upon being called as a witness for and on behalf of the Defendant Hans Forster, and being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Griffin): State your name, please.

A. George F. Kachlein, Jr.

Q. And your home residence?

A. 941 Eleventh Avenue North, Seattle.

Q. And your profession?

A. I am an attorney at law.

Q. And when were you admitted to practice before the Supreme Court of the State of Washington, Mr. Kachlein?

A. In February, 1933.

Q. And in what year were you admitted to practice before this court?

(Testimony of George F. Kachlein, Jr.)

A. The same year.

Q. And with whom did you begin your association in the practice of law?

A. I began with the firm of Bogle, Bogle and Gates in July, 1932, as a law clerk.

Q. Are you now a member of that firm?

A. Yes; I have been since 1937. [4903]

Q. Did you in your practice specialize particularly in any branch of the law?

A. The first eight or nine years being with the firm I handled the tax work that was in our office. That was up through, approximately, 1942. At that time I was under leave of absence from the office for four years.

Q. In connection with what type of work?

A. With war work where I was employed by Todd Shipyards Corporation, or a subsidiary, Seattle-Tacoma Shipbuilding Company.

Q. In what capacity?

A. At the Tacoma plant as assistant to the president of the subsidiary of Todds.

Q. That was in connection with war work?

A. Yes, it was.

Q. When did you return to the firm then?

A. In July, 1946.

Q. And what has been your specialty particularly since that time?

A. Well, it has been a multitude of different types of work, partially in tax, corporate work, corporate financing, and labor work, and also in the office management and of the firm.

(Testimony of George F. Kachlein, Jr.)

Q. Are you married? [4904]

A. Yes, I am.

Q. Any children? A. One son.

Q. Attending the University of Washington?

A. A Sophomore at the University of Washington, sir.

Q. You are acquainted with L. Hicks Taylor?

A. Yes, I am, sir.

Q. When was your—when and what was the source of your first acquaintanceship with Mr. Taylor?

A. Shortly after I returned to the office in 1946. I believe it was in the month of December, 1946, Mr. Taylor called me to state that he had known something about me and knew that I had been doing tax work and that he had a client that he would like to have me handle some tax work for.

Q. And who was that client?

A. That was a family consisting of three, father and son and daughter, who were operating a family partnership and the question was——

Mr. Moriarty: Objection, if your Honor please, to this line of testimony sofar as the materiality is concerned.

The Court: Well, it is preliminary.

Mr. Moriarty: I thought the preliminary [4905] had been completed.

The Court: Objection overruled.

A. (Continuing): ——the question as to the advisability of converting the family partnership into a corporation, and that was determined after

(Testimony of George F. Kachlein, Jr.)

consultation with Mr. Taylor and the three clients.

Q. Did——without any detail, did that situation —was Mr. Taylor the accountant for this party?

A. Yes, Mr. Taylor was the accountant for the family partnership which was later converted to the corporation.

Q. Did that result in an involvement of tax matters with the Government with the books of that concern? A. Yes.

Mr. LeSourd: Objected to.

Mr. Griffin: Just a moment.

Mr. LeSourd: Objected to as an immaterial and irrelevant and also as leading.

The Court: Well, the Court will overrule the objection.

A. (Continuing) Yes. Approximately six months later Mr. Taylor reported to me that the family partnership between the father and the son [4906] and the daughter was under investigation and asked that I assist in preparing the necessary protest and handle the matter through the Treasury Department to a conclusion, which was done.

Q. You did that? A. I did, sir.

Q. Did Mr. Taylor during that period of time remain as the accountant?

A. He did, sir.

Q. Now, do you recall when the next matter of business with Mr. Taylor occurred?

A. Yes. In the latter part of the year 1947 Mr. Taylor called me and stated that another client of his had some tax difficulties involving the validity.

(Testimony of George F. Kachlein, Jr.)
for tax purposes of a family partnership between a father, who was a professional man, and a daughter, who was a non-professional woman. I undertook the assignment and worked with Mr. Taylor and prepared the necessary protests and presented the various arguments before the Treasury Department representatives and it wasn't settled until about 1952. That was due to the fact that there were family partnership cases pending before the Supreme Court, and the right——

Q. (Interposing): Was Mr. Taylor, did Mr. [4907] Taylor continue up until sometime in 1950 as the accountant for that family partnership?

A. I believe he is still the accountant for those parties, sir. He continued on through 1950 to '51 and '52, which was my last contact with them with respect to that matter.

Q. In connection with that employment, with those two concerns, did you become familiar with Mr. Taylor's handling of books and accounts?

A. Yes, I did.

Q. Did Mr. Taylor eventually retain you as his attorney in regard to his own tax problems?

A. Yes, he did, sir, on or about the 30th of July of 1948 he retained me.

Q. What was—what was the matter involved at that time with Mr. Taylor?

A. On or about that date he called me by telephone and advised that the Internal Revenue Department had undertaken the investigation of his own individual records and that he had asked one

(Testimony of George F. Kachlein, Jr.)

of the representatives of the Department to withhold the examination for a limited period as he was extremely busy with clients' matters. He advised—asked me, first of all, if he could file—prepare and file amended income tax returns. He also asked me in [4908] the event that the—his request for the delay in the examining of his records was not granted if I could be of some assistance to him in both of those assignments. I took it on and advised him sofar as the amended income tax return was concerned that it was too late to stop any investigation but if he wanted to prepare the same he could. With respect to the second item I did contact a representative of the Government, a Mr. Weston, and made the request for a limited period of time that the Government would withhold the investigation of his records to afford him the opportunity to review his books and that he was extremely busy at the time and also asked that same Government representative if it would be all right to file an amended return. I so advised Mr. Taylor of the results of the conferences that I had with Mr. Weston.

Q. Did Mr. Taylor go into the matter with you of the condition of his own books and records and his returns?

A. Yes, he did. He stated to me that he was very much embarrassed. When the Government agent came in and he started to check his bank deposits and deposit slips with his cash book, or journal as I believe he called it, as against his in-

(Testimony of George F. Kachlein, Jr.)
come [4909] tax return, he found that there was a substantial understatement of income.

Q. By Mr. Taylor himself?

A. By Mr. Taylor on his own income tax returns. That his journal, or cash book, whichever you may want to call it, from which he based his income tax returns, reflected accurately—that is, the cash book figures were picked up and put into the tax return but insofar as his deposit slips and his bank account, he found he had substantially more income in the years under investigation than he had reported and that was the reason that he wanted, as he stated, to me, to file an amended income tax return for those years.

Q. As you investigated the matter with Mr. Taylor were there several years involved?

A. Yes. I believe the years that were under consideration—that the power of attorney, rather, to me were from 1942 through 1947, inclusive.

Q. And what did—did Mr. Taylor finally advise you of the amount, or percentage, of understatement of his income in those years?

A. No, I do not believe that he gave me any figures as I don't know what he finally came up with, even though I represented him from 1948 through a [4910] good part of 1950. I do know the figures which the Government alleged but as far as the final determination, I don't know that, Mr. Griffin.

Q. After this first consultation with you, which

(Testimony of George F. Kachlein, Jr.)

was in July—the end of July, I think you said, of 1948? A. That is right.

Q. Were there numerous consultations in regard to his own tax situation during the following months?

A. Yes, there were. The first one came about three weeks after I had contacted Mr. Weston and I got a call from Mr. Weston, who was of the Internal Revenue Agents office here, stating that he wondered what I thought I was doing, that he had heard a report on the street that I had arranged that Mr. Taylor's taxes were all settled and that there was to be no further investigation. I assured him such was not the fact, and he said that information came to me, and Mr. Taylor told someone on the street about it, and I called Mr. Taylor with respect to that and Mr. Taylor advised me he made no such statement and I then advised Mr. Taylor that in view of the fact of Mr. Weston's making the statement to me he would have to make a report to his superiors [4911] with respect to the inference, that he could expect to have his income tax returns examined very promptly. Approximately a week later, I believe that Mr. William Marx, sitting here in the court, and Mr. McCarthy of the Special Agents' Office, started their investigation and I sat through several meetings with them during the period of time from 1948 through their completion of their examination in August of 1949. At those meetings Mr. Taylor was present and participated in them.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: May the record show that the Government objects to this as all immaterial.

The Court: The record may so show.

Are you speaking of all the testimony?

Mr. Moriarty: I mean the recitals that now don't seem to be material to the issue between Mr. Taylor and Mr. Forster. Certainly not relevant to the Government's case. I recognize the position that the Court is in but I think it is my duty to call it to the Court's attention.

The Court: Well, I believe I probably should advise the Jury at this time that this testimony has relationship to the issue raised by the Defendant Taylor as part of his defense wherein, as you will recall, in the opening statement he stated, [4912] or his Counsel stated, that by virtue of representation of Mr. Taylor by Mr. Kachlein, a relationship existed as a result of which at a later date Mr. Forster was under investigation and Mr. Forster undoubtedly made statements to the representatives of the Treasury Department relative to the books of Mr. Taylor. I understand in the theory of the defense of Mr. Taylor they believe this transaction raises some question as to the credibility of the defense of Mr. Forster. Whether it does, of course, is a matter entirely for the Jury. This testimony having—some testimony having been introduced, or the defense of Mr. Taylor having been put in, this testimony now comes in by Mr. Forster, on behalf of Mr. Forster, in rebuttal and an explanation of that testimony, and while the incidents

(Testimony of George F. Kachlein, Jr.)
that are covered in this matter by Mr. Kachlein may be preliminary and not related to the issues involved—namely whether these three defendants here charged are guilty of the charge—and they do not relate to the specific elements, which the court will later instruct you are involved in the charge, but facts that may have a bearing on the credibility of witnesses or defendants are always material and this testimony is in that—along that line. [4913]

Mr. Moriarty: And, if your Honor please, no part of this matter was introduced by the Government.

The Court: I think it is clear that this issue is one raised by the defendants Forster on the one hand and Taylor on the other.

Mr. Moriarty: Thank you.

The Court: Is there any objection to the Court's comment?

Mr. Griffin: No, none at all, except it was an issue raised in the opening statement by the Defendant Taylor, and Forster never raised it.

The Court: I believe I so signified.

Mr. LeSourd: I think your Honor covered that.

The Court: All right, we will now proceed.

Mr. Griffin: May I proceed?

The Court: Yes, you may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Kachlein, during this investigation by Mr. Marx, Mr. McCarthy—at which you were present in several conferences with the Agents—and Mr. Taylor, did you become then fa-

(Testimony of George F. Kachlein, Jr.)

miliar with the [4914] manner in which Mr. Taylor handled his own books and records?

A. Yes, very much, sir.

Q. And did you prepare for the Agents in behalf of Mr. Taylor a memorandum dealing with the manner in which Mr. Taylor had handled his own books and records and the reason therefor?

A. I did, sir. At the conference in August of 1949 before the Special Agents office and their representatives an oral presentation was made in behalf of Mr. Taylor, Mr. Taylor being present, and I was then requested to reduce to writing and make a written presentation in his behalf. I did do that and I believe submitted it to them the latter part of August, 1949, to Mr. Weisner, who was then, I believe, the acting Special—Acting Chief of the Special Agents Office.

Q. Was that written presentation—did it cover the statements that you had made in your oral presentation in behalf of Mr. Taylor?

A. It did to the best of my ability, sir, and it covered additional items which Mr. Taylor and myself had gone over in my office in preparation of the formal statement.

Q. And did Mr. Taylor go over this statement [4915] before it was presented? A. Yes, sir.

Mr. Griffin: Will you mark this memorandum for identification?

The Clerk: Defendants' Exhibit Number A-139 marked for identification.

(Testimony of George F. Kachlein, Jr.)

(Defendants' Exhibit No. A-139 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-139 for identification I will ask you if this is the memorandum prepared by you, to which you have just testified, which was delivered to the Government Agents in connection with Mr. Taylor's own tax matter?

A. Yes, this is a copy of the one delivered to the Agents.

Q. Now, while Counsel is examining that:

Did you find in these conferences with Mr. Taylor that he had ever reconciled his bank account to his journal, if it was a journal? On the witness stand I think he testified and called it a time book. Did you find that he had ever reconciled his bank account to this book, whether journal or time book from which he took the figures for his own tax return? [4916]

A. No, I didn't. He stated to me, as a matter of fact, that his failure to properly file his return was due to the fact that he had not reconciled his cash book, or journal, with his cash account, bank account.

Mr. Griffin: I will withhold the offer of this until morning so that Counsel may examine it.

Q. (By Mr. Griffin): Did Mr. Taylor give you any excuse, any reason, you could use that would excuse his situation in his own books and records?

A. Yes, his excuse that he gave, the basic one, was that he was so busy looking after the affairs

(Testimony of George F. Kachlein, Jr.)

of other clients that he failed to look after his own financial affairs properly; that insofar as his collections by the month or by the job, as the case may be, he would properly put them through the bank accounts but insofar as his journal, cash book, or whatever you may call it, was concerned, originally when he started out many years ago he would continue day by day to make the entries but as he became more busily engaged in his profession that he might make the entries once a week, and then it extended on to once every two weeks, and finally he [4917] would make them from memory and he used that as his basis for his income tax returns. He did keep records insofar as his bank interest, and insofar as his stock purchases rather carefully as he was able to get those from Jordan and Company, which, I believe, was his stock brokers, and from the bank accounts where he had books.

Q. Do you recall as of that time—and by that time I mean prior to the Indictment of Mr. Taylor and which would have been prior to the Indictment in this case, and while these conferences were being had with the Agents—do you recall at that time of making—using—the terms, with the Agents the term, "sloppy" in connection with the bookkeeping of Mr. Taylor?

A. Both sloppy and careless, sir.

Q. And as of that time did you base that upon his own records and your experience with these other two companies that be brought to you?

A. Well, I had experience with one or two others

(Testimony of George F. Kachlein, Jr.)

of Mr. Taylor's clients who Mr. Taylor had brought to our firm to help assist in some problems they had and from the several it became apparent to me that Mr. Taylor's methods of handling the books of account were sloppy, sir. [4918]

Q. Do you recall one of these conferences you had before Indictment was with Mr. Patten?

A. Yes, sir. That was in November. I think there were two conferences with Mr. Patten in November, 1949. One was not in the presence of Mr. Taylor. That was the first one, and the second was in the presence of Mr. Taylor, if my memory serves me right, sir. The first was a preliminary conference and the second was the full, formal conference where the entire presentation of Mr. Taylor's case was made to Mr. Patten.

Q. What principal representations were you making to the Government Agents, including Mr. Patten, on behalf of Mr. Taylor at that time?

A. There were several, sir. One was that he was a very overworked person. He had undertaken more work to do than he could normally accomplish. The second thing is that he had a good reputation among his clients. They liked him. They thought well of him. The third matter was that with all due regard to their feeling toward him, his bookkeeping experience or accounting experience was somewhat limited and his methods of accounting were somewhat sloppy as reflected in his own methods in protecting himself in the income tax returns. It was [4919] not an intentional matter. It was one, frankly, due

(Testimony of George F. Kachlein, Jr.)
to overwork and ignorance more than anything else.

Mr. Griffin: I think this would be a good time to recess because we are getting right down to the Indictment.

The Court: All right. Mr. Kachlein, you may be excused.

(Whereupon, witness withdrew.)

* * * * * [4920]

GEORGE F. KACHLEIN, JR.

having been called as a witness for and on behalf of the Defendant Hans Forster, and having been previously duly sworn, resumed the witness stand and testified as follows:

Direct Examination—(Continued)

Q. (By Mr. Griffin): Mr. Kachlein, as of yesterday you had completed certain conferences with Mr. Taylor, the Internal Revenue staff, including Mr. Patten, and on or about February 15, 1950, did you have advice from Mr. Sager, the then Assistant United States District Attorney, in connection with Mr. Taylor's situation?

A. Yes. I had received a letter, I believe, on the 16th of February, 1950, from Mr. Sager, who was then the Assistant District Attorney, whose offices were at Tacoma, advising that the Hicks Taylor matter involving certain years had been referred to him for action—that is, prosecution—and that he stated before any action was taken he would give me an opportunity, or the taxpayer, to be heard in connection with the matter.

(Testimony of George F. Kachlein, Jr.)

Q. Did you confer with Mr. Taylor in connection [4930] with this letter?

A. I did, sir.

(Whereupon, there was a brief pause.)

Mr. Griffin: Will you mark this for identification, please?

The Clerk: Defendants' Exhibit Number A-140 marked for identification.

(Defendants' Exhibit A-140 marked for identification.)

Mr. Griffin: And this one, please.

The Clerk: Defendants' Exhibit Number A-141 marked for identification.

(Defendants' Exhibit A-141 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-140 I will ask you if that is the letter under date, February 15, 1950, from Mr. Sager, United States Attorney's Office, to you in regard to this matter?

A. Yes, this is the letter, sir.

Q. And A-141, your reply of February 17th to Mr. Sager; a copy of your reply?

A. Yes, this a copy of the reply that I sent to Mr. Sager.

Q. Following those letters did you have—and [4931] your conference with Mr. Taylor, was it clear then that there was going to be prosecution—criminal?

A. Yes, it was clear. I had a lengthy conversation in conference with Mr. Taylor wherein we reviewed the tax case that had developed over the

(Testimony of George F. Kachlein, Jr.)
year and a half period. I discussed with him what the chances were in our opinion as to a defense to the income tax matter and recommended to him that in our opinion—and I mean by "our" that is our firm because I had reviewed the matter with several of our trial men and tax men in the office to determine what action we should take in respect to the matter, and advised him that in our opinion—he did not have a defense to his case, that we had lived with the case since September 30th, or, rather, July 30, 1948, and had met with the Internal Revenue Agents, field men, had met with the Review Staff, had reviewed it carefully and felt that the best thing to do was to work out an arrangement with the District Attorney in the event he still wanted to prosecute the case to have him plead guilty to one charge and to waive the necessity of going before a grand jury for indictment, that by doing so it would eliminate added publicity, it would not in our opinion affect him as adversely as if he went through—had the matter go [4932] before a grand jury and the publicity that would follow, and then go to trial and a trial in which we felt his defense was hopeless.

Q. Did Mr. Taylor make any complaint to you that he had any defense because of his failure to make the full return of income?

A. Yes, he did. He stated that actually in his mind——

Mr. Maxwell: Will you fix the time and place?

A. (Continuing) At the meeting that I had on

(Testimony of George F. Kachlein, Jr.)

the 17th of February, again, when I came back and reported to him and had a meeting following my conference with Mr. Sager, and that was between the 17th and 28th of March, Mr. Maxwell.

Mr. Maxwell: Thank you.

A. (Continuing) Mr. Taylor's position was at all times that he had been careless and he had been negligent in the keeping of his own books and returns, that he had been extremely busy and that many of the small concerns which he had represented over a number of years had ballooned, particularly during the war period—mushroomed out—and that he was snowed under with work and that, therefore, he didn't feel that he wilfully attempted to evade the income [4933] tax, that it was an oversight on his part. He felt very much chagrined that he had made the mistake and so stated very clearly to me and also to the court at the time that he was sentenced. Our position was, however, that, be that as it may, here was a man who was a licensed public accountant, who has held a Treasury Card, or did up until November, I think November of 1948, who had been president once or twice of the Washington State Public Accountants, who had held himself out to the public as a man who was handling tax matters, that we didn't feel that any court or jury could conceive that he did not have some knowledge of the failure to report his income or prepare his tax returns properly and we so stated to him, that if he went before a jury we felt he would be convicted and, therefore, our recom-

(Testimony of George F. Kachlein, Jr.)

mendation was that it was an attempt to work out an arrangement with the District Attorney whereby the five years involved, he would plead guilty to one count and the other five counts would be dismissed. That was the basis of our decision on the matter.

Q. (By Mr. Griffin): Then did you confer with Mr. Sager and try to work out a program for Mr. Taylor? [4934]

A. I conferred with Mr. Sager as mentioned in the letter, that exhibit that was introduced, about four or five days following the sending of the letter to Tacoma. At that conference I reviewed with Mr. Sager the position which we had taken before Mr. Patten and Mr. Wisener, and stated it was still our position. He commented that he had reviewed the file and felt that no jury would find Mr. Taylor innocent and that he was going to proceed with the matter before the grand jury unless we were willing to waive indictment and if we did so and go without trial he felt that could be worked out whereby we could have Mr. Taylor plead guilty to one charge out of the five. The years in which he was indicted, which I believe was 1942 to 1947, that he, Sager, would determine the year for which Mr. Taylor would plead guilty. After having that meeting I then conferred again with Mr. Taylor and told him the outcome of it and asked him to think over whether or not he wanted to go that route or if he wanted to go the other route and try it out; that insofar as we were concerned we felt that he might be better if he selected additional counsel, or

(Testimony of George F. Kachlein, Jr.)

other counsel, by reason of our feeling in the matter. About the 28th of February I talked again with Mr. Taylor and asked him as to what his [4935] position was and he stated that after all he felt that he had confidence in our office and in our judgment and he was willing that I work out with Mr. Sager a time and place to meet to carry out the tentative arrangements which I had made with Mr. Sager, subject to Mr. Taylor's approval.

Q. What followed at that particular time?

A. I called Mr. Sager, or Mr. Sager called me, I don't recall which, and made a tentative date to meet with Mr. Sager in his office March 2, 1950, and asked Mr. Sager to prepare the information which would charge Mr. Taylor with the five counts and to arrange for us to appear before the Court to enter our plea. That was done on March 2nd when we went to Tacoma.

Q. There was also a conference with the probation office, Mr. Coventry, at that time?

A. On March 2nd we drove to Tacoma and met in Mr. Sager's office and we went over the information or the Indictment, as the case may be.

Q. By "we" you mean?

A. Mr. Taylor and myself. We then went into Court and appeared before Judge Leavy, at which time Judge Leavy specifically asked Mr. Taylor if he had counsel and if he had read over the Indictment, [4936] and if he was ready to give his answer, which he did, pleading not guilty, I think, to four of the charges and pleading guilty to the charge for

(Testimony of George F. Kachlein, Jr.)

1943. Following that the Court set bond which, if my recollection serves me right, was twenty-five hundred dollars and we were instructed by the Clerk to meet with Mr. Coventry who was the probation officer, or who was known as the pre-sentencing officer, in Judge Leavy's court, and we met with him and went over the information which he desired to obtain in behalf of the Court prior to sentencing.

Q. Now, as of that date of March 2, 1950, had you ever met Hans Forster?

A. No, Mr. Griffin.

Q. Or had you or your office ever had any business dealings with and for the Defendant Hans Forster? A. No, Mr. Griffin.

Q. Now, did the matter of Mr. Taylor's position as in March of 1950 have a tendency to reflect upon his license from the State of Washington to practice public accounting? I won't go into detail with that now. You can just state "yes" or "no".

A. Yes.

Q. Did you have a conference with Mr. Taylor [4937] and his associates in that connection, about March 9th?

A. I don't recall in March having a conference with him. The conference that I recall took place in April of 1950, Mr. Griffin.

Q. Was one of Mr. Taylor's associates a Mr. Benedict? A. Yes, sir.

Q. Did you have a conference with Mr. Benedict on or about March in the office?

A. I did, sir.

(Testimony of George F. Kachlein, Jr.)

Q. Was that with the—was Mr. Taylor aware of that conference? A. He was, sir.

Q. And what did that involve?

A. That involved what the position of the several accountants that were associated with Mr. Taylor would be. They were concerned as to the fact that Mr. Taylor had pled guilty to an income tax matter of his own and they wondered as to how it would reflect upon them in their association with Mr. Taylor.

Q. Later did you advise how they should conduct their business; how the office set up should be arranged? [4938]

A. About June 27th or 28th——

Q. (Interposing) Well, I will take it that your answer is "yes" to that question. A. Yes.

Q. Because I want to take it as chronologically as I can. A. Yes; yes, sir.

Q. Now, was Mr. Taylor's civil tax liability also involved as well as the criminal liability?

A. Yes, it was. There are a number of things that become involved after a person has pled guilty. One of the things which we were attempting to determine from the time the investigation started in July of 1948 was the exact tax liability of Mr. Taylor, and Mr. Taylor wanted likewise to determine that as he wanted to pay it as soon as possible for stop the running of interest. When the matter was referred, however, to the Department of Justice for criminal prosecution the matter then goes out of the hands of the Treasury Department and be-

(Testimony of George F. Kachlein, Jr.)
comes a matter for the Department of Justice to handle and they, under a long established procedure, do not allow the taxpayer, until such time as the criminal matter is finally determined, to sit down and determine the civil liability with the Internal Revenue [4939] Department. Thus, when Mr. Taylor had pled guilty, knowing that he would possibly be sentenced for a period of time to the penitentiary both Mr. Taylor and myself wanted to work out as quickly as possible a definite settlement of his civil tax liability and starting with Mr. Coventry, the probation officer, then with Mr. Sager, who was the Assistant District Attorney, or Assistant United States Attorney, we attempted to get the final figures which the Government had determined to be Mr. Taylor's liability, not that we necessarily would agree with them but so that we would have some way in which to work out a settlement wherein there might be a difference from a factual standpoint. This took place, I would say, starting about the 10th of March and, frankly, through the time up to his actual sentencing. We did get from the District Attorney the net figures that were due and owing from Mr. Taylor and from his wife for the years involved but we didn't get any breakdown of it. We then attempted to get the breakdown from the Internal Revenue Department which we did not get, nor have I ever seen.

Q. Now, in connection with this matter, both of the—in the civil liability and the criminal prosecution, [4940] were you required to file with the pro-

(Testimony of George F. Kachlein, Jr.)

bation officer, United States Probation Officer, a statement for Mr. Taylor before sentence?

A. Yes, I was. In the—I did file one. I prepared one after a lengthy consultation with Mr. Taylor.

Q. And did Mr. Taylor go over that statement before it was filed? A. He did, sir.

Mr. Griffin: Will you mark this for identification, please?

(Defendants' Exhibit A-142 marked for identification.)

The Clerk: Defendants' Exhibit Number A-142 marked for identification.

Mr. Griffin: By "this" I am referring to a statement of March 20, 1950.

Mr. Moriarty: You haven't offered 141?

Mr. Griffin: I haven't offered any of these yet.

Q. (By Mr. Griffin): Handing you 142 for identification I will ask you if that is a copy of the statement you just referred to under date of March 20, 1950, to the United States Probation Officer? [4941]

A. Yes, it is, sir.

(Whereupon, there was a brief pause.)

Mr. Griffin: At this time I offer Exhibit A-39.

The Clerk: A-139.

Mr. LeSourd: No objection.

Mr. Moriarty: Except as to materiality the Government has no objection. The Government feels that the entire matter is immaterial.

The Court: Well, the materiality of this is restricted as the Court indicated yesterday.

Mr. Griffin: Yes, sir.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: Very well, your Honor.

The Court: And it may be admitted.

(Defendants' Exhibit A-139 admitted in evidence.)

Mr. Griffin: And I offer A-140 for identification.

Mr. LeSourd: No objection.

Mr. Moriarty: Same objection.

The Court: It may be admitted on the same basis, that the matter refers only to the issues as outlined to the Jury yesterday afternoon.

(Defendants' Exhibit A-140 [4942] admitted in evidence.)

Mr. Griffin: And A-141.

Mr. LeSourd: No objection.

Mr. Moriarty: Same objection.

The Court: A-141 may be admitted on the same basis.

(Defendants' Exhibit A-141 admitted in evidence.)

Mr. Griffin: And A-142.

Mr. LeSourd: No objection.

Mr. Moriarty: Same objection.

The Court: It likewise is admitted on the same basis as A-139 and subsequent admitted exhibits.

(Defendants' Exhibit A-142 admitted in evidence.)

Mr. Griffin: May I refer to the exhibit now, if the Court please?

A-139 is headed:

"Presentation of Facts and Arguments in Support of Position That L. Hicks Taylor and Jessie

(Testimony of George F. Kachlein, Jr.)

M. Taylor, His Wife, Are Not Subject to the Penalties prescribed by Section 141 of the Internal Revenue Code for the Taxable Years 1942-1947 Inclusive." [4943]

Q. (By Mr. Griffin): You have testified that this is the statement submitted to the staff, Internal Revenue Staff? A. That is correct.

Mr. Griffin: There is an opening statement entitled "Opening Statement," which I will not read which is the charge.

The second page, "The Facts," paragraph number 1. "History of Taxpayer" in detail, "(b) Schooling." Referring to the education of Mr. Taylor. "(c) Business Experience of Taxpayer," in considerable detail. "(d) Living Habits," on page five. "(e) Development of Taxpayer's Accounting Practice." "(f) Taxpayer's Bookkeeping Methods," in detail. "(g) History of Income Tax Examination"; that is by the Agents. "(h)," an argument of "Substantial Estate Not Required." And on page nine, under the heading of "Argument," the argument made against the claim of fraud. I would like to read it but it is too long for my present purpose in reading.

A-140 is the letter from Mr. Sager, February 15, 1950, to Mr. Kachlein, advising:

"The Attorney General has forwarded to me for prosecution the investigative file in the above entitled matter." [4944]

That is L. Hicks Taylor.

(Testimony of George F. Kachlein, Jr.)

"I have reviewed the file and contemplate filing criminal charges.

"The Attorney General suggests that before any formal action is taken that I give you an opportunity to be heard in behalf of the taxpayer. If you wish, I shall be glad to see you concerning this matter prior to taking any definite action. Since prosecution will cover the year 1943 charges will have to be filed prior to March 12. So, if you plan to see me, you should arrange to do so prior to that time. Yours very truly, Harry Sager, Assistant United States Attorney."

To which A-141 is the reply of Mr. Kachlein of February 17th, arranging for the appointment.

A-142 is Mr. Kachlein's letter to Mr. Coventry, United States Probation Officer, March 20, 1950, setting out on pages one and two references in behalf of Mr. Taylor, and that goes over to the middle of page three. Beginning at the middle of page three the statement of assets and liabilities of Mr. Taylor, total of $204,907.80. The next page in explanation of matters involved as of March 20, 1950.

Q. (By Mr. Griffin): Now, when was the—was a time arranged, was a time arranged for the sentence of Mr. Taylor?

A. As of this date, no, Mr. Coventry at the time we had our original meeting, stated that normally an investigation such as would be conducted on behalf of the Court would take anywhere from six weeks to two months, that we might anticipate somewhere around May 1st as the sentencing date.

(Testimony of George F. Kachlein, Jr.)

Later on the date was set but that was a week before actual sentencing was had which was April 25, 1950.

Q. As of——

Mr. Griffin: Strike that. Will you mark these two letters as one exhibit, the top one March 31, 1950?

The Clerk: Defendants' Exhibit Number A-143 marked for identification.

(Defendants' Exhibit A-143 marked for identification.)

Q. (By Mr. Griffin continuing): Handing you Exhibit A-143 for identification I will ask you if the first letter dated March 31, 1950, is a letter to you from Mr. Sager in this matter?

A. Yes, it is, sir. [4946]

Q. And the second letter is a copy enclosure with that letter under date of March 29th, a letter from Mr. Stockton to Mr. Sager?

A. Yes, it is, sir.

Mr. Griffin: I will offer A-143 for identification.

Mr. Moriarty: Same objection.

Mr. LeSourd: No objection.

The Court: It will be admitted as the immediately preceding exhibits have been admitted and the Court again advising the Jury that this matter relates not to the charge contained in the Indictment but the issue as outlined to the Jury yesterday.

(Defendants' Exhibit A-143 admitted in evidence.)

(Testimony of George F. Kachlein, Jr.)

Mr. Griffin: The first letter from Mr. Sager to Mr. Kachlein is dated March 31, 1950, and bears a stamp received April 1, 1950, which states that it is enclosing a statement from Mr. Stockton of the tax unit in regard to the outlined deficiencies and liabilities of Mr. Taylor for the years referred to in Mr. Stockton's letter, being 1942 to 1947, giving the claimed deficiency and the penalties claimed for each of those years. The total is not stated in the letter. [4947]

Q. (By Mr. Griffin): These figures, or the pencil figures, Mr. Kachlein, do you know whose those are?

A. Those are in my handwriting, sir.

Q. And represent the total of the claim?

A. The total of the deficiency, the total of the penalty, and the total of the six per cent or the penalty under Section 294.

Q. A total as of that date claimed by the Government of $52,257.68?

A. That is right, if my addition is right.

Q. Yes, sir. Now, the date of this letter is March 31, 1950, and the receiving stamp is April 1, 1950. Now, when did you first meet Hans Forster?

A. I met Hans Forster on March 30, 1950, at my office.

Q. When first did you have knowledge, that is, in any professional way, of an individual by the name of Hans Forster, in connection with this matter?

(Testimony of George F. Kachlein, Jr.)

A. I don't quite understand "in connection with this matter."

Mr. Griffin: I will withdraw that question.

Q. (By Mr. Griffin continuing): Will you state to the Jury what occurred and how you happened to meet Mr. Forster? A. Yes, I will.

Q. If you will.

A. On the 29th of March 1950, Mr. Taylor called me by telephone and stated that he wanted to have a conference with me and to meet a Mr. Hans Forster as Mr. Forster had some corporate minutes or corporate records to discuss. Prior to that time, however, I had heard of Mr. Forster from Mr. Taylor over a period of, well, I would say several years. By that I mean probably two years. He had talked from time to time with me about the various people whom he did work for and took great pride in representing a Mr. Forster and Mr. Forster's businesses so that I did know of Mr. Forster but I had never met him in person nor did I have anything from a legal standpoint to do with him until the following day, which was March 30, 1950. In addition I had heard about Mr. Forster from a Mr. Clarence Hagstrom, the chap who testified earlier in the case. Mr. Hagstrom is an insurance man and Mr. Hagstrom had talked to me at one time in 1949 stating [4949] that he had been doing some work for a Mr. Forster and was hopeful that sometime he might bring him to our office as he felt he needed some assistance in forming some family trust and an insurance program.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: This is a point unresponsive and entirely unrelated what Mr. Hagstrom said to him.

Mr. Griffin: I will proceed.

The Court: I believe that is correct.

Q. (By Mr. Griffin): With the conference with Mr. Taylor——

Mr. Moriarty: (Interposing) I move that that part referring to Hagstrom be stricken.

Mr. Griffin: I asked the question originally and I think Mr. Kachlein was answering whether he heard of Mr. Forster.

The Court: I think the portion relating to Mr. Hagstrom's conversation should be stricken.

Mr. Kachlein: Sorry, your Honor.

Q. (By Mr. Griffin continuing): Now, Mr. Taylor called you for a meeting with Mr. Forster?

A. Yes, sir.

Q. And when was that conference held?

A. That conference was held the following day on [4950] March 30, 1950.

Q. And who was present?

A. Mr. Forster and Mr. Taylor and myself.

Q. Was that the first time, March 30, 1950, that you ever personally met Hans Forster?

A. To the best of my knowledge and recollection it certainly is.

Q. It is the first time, so far as you know, that Mr. Hans Forster had any professional business in your office? A. Yes, sir.

Q. With your firm, I mean?

A. With our firm or myself.

(Testimony of George F. Kachlein, Jr.)

Q. Had Mr. Taylor brought you, in October or November, 1949, or at any time prior to March 30, 1950, any books or records of any of Mr. Forster's enterprises, Finstad and Utgard or any others?

A. No, sir.

Q. Had you ever heard of Finstad and Utgard?

A. No, sir.

Q. Until March 30, 1950?

A. That is correct.

Q. And did this conference on March 30, 1950, with Mr. Forster have anything to do with [4951] taxes? A. It did not, sir.

Q. What was the business for which Mr. Taylor brought Mr. Forster to your office?

A. There were two phases to it. One was a general resume of the businesses which Mr. Forster owned, or had an interest in. He told me that——

Q. (Interposing) Let me stop you there for a moment. Did you make a memorandum at the time of this first meeting with Mr. Forster?

A. I made a pencilled memorandum as he was talking and converted it into a typewritten memorandum, I believe, on April 1, 1950.

Q. Was that the usual practice by you and your firm in dealing with a new client, or possible client?

A. Yes. We tried to do it particularly where there were a number of items discussed in which some of them were substantial in nature.

Mr. Griffin: Will you mark this memorandum for identification, please?

(Testimony of George F. Kachlein, Jr.)

The Clerk: Defendants' Exhibit Number A-144 marked for identification.

(Defendants' Exhibit A-144 marked for identification.) [4952]

Q. (By Mr. Griffin): Handing you A-144 for identification, is that your office copy of the memorandum made at that time, one of the office copies?

A. Yes, it is; it is the original.

Q. Now, will you proceed to tell the Jury the nature of that conference and its purpose?

A. As I started to say, it was in two phases. One was to give me a general picture of Mr. Forster's holdings. It started out by telling about his interest in Alpine Dairy, Issaquah Creamery, Alpine Ice Cream Company, Finstad and Utgard, Puyallup Creamery or Simonson and Forster as it has been used here, Renton Ice and Ice Cream Company, the general nature of the business and of these businesses and the ownership which Mr. Forster had in them, the purpose being to give us a general idea of his operations so that in the event any matter came up during the time that Mr. Taylor was serving sentence, if he was required to do so, that someone would have some legal knowledge in general of his holdings. Furthermore, to provide for an assistant secretary or assistant treasurer for these companies as Mr. Taylor was assistant—as Mr. Taylor was either secretary or treasurer of these companies, [4953] or both, so that someone would be on hand with which to take care of the normal, routine work that needed to be done and

(Testimony of George F. Kachlein, Jr.)

also at the same time was brought in the Finstad and Utgard matter with regard to the acquiring from Mr. Croson, an attorney, of certain stock which had been placed in escrow with him which has been testified to in this matter before for us to prepare the necessary papers to get the stock out of escrow.

Q. The Finstad and Utgard stock as of that time had been paid for and the matter now closing——

A. (Interposing) I was told that it had been paid for and that all that needed to be done was to obtain the stock from Mr. Croson. I called Mr. Croson at that time. He said he would have to get the file out and call me back later.

Q. Now, you say that Mr. Taylor attended this conference with Mr. Forster?

A. Oh, yes, he brought him in, sir.

Q. Was Mr. Taylor on bond, out on bail bond awaiting sentence at that time?

A. He was, sir.

Q. From whom did you obtain most of your information in this conference, or was it from both, or how? [4954]

A. Well, the information was obtained from Mr. Taylor insofar as the holdings were concerned and a general picture of the financial set up of these corporations. I was amazed to find, frankly, the size of the businesses.

Mr. Griffin: I offer in evidence Exhibit A-144.

Mr. LeSourd: I will object to this one, your Honor. He has outlined in detail——

(Testimony of George F. Kachlein, Jr.)

Mr. Griffin: I will not urge it.

Mr. Moriarty: We haven't seen it, your Honor.

Mr. Griffin: I am sorry.

The Court: You are withdrawing your offer?

Mr. Griffin: Yes, your Honor, I will withdraw the offer.

Q. (By Mr. Griffin): What was stated to you by Mr. Forster or Mr. Taylor at that time, if you can segregate one from the other, as to the stock ownership of Finstad and Utgard?

Mr. LeSourd: Objected to as irrelevant and immaterial. This is 1950, your Honor. This is going beyond now the whole subject of this phase of [4955] the case.

The Court: I don't know what the purpose of it is. As to the issues involved in the charge it would not have any connection.

Mr. Griffin: It goes to the credibility of Mr. Taylor here in statements made; this one particularly.

The Court: I will overrule the objection and consider a motion later and I will advise the Jury that testimony regarding Finstad and Utgard is not to be considered in connection with the charge of tax evasion as set forth in the Indictment. You may proceed.

A. I was advised by Mr. Taylor that the ownership in Finstad and Utgard was one hundred per cent Mr. Forster as of that date, sir.

Q. (By Mr. Griffin): Yes, sir; now——

The Court: (Interposing) Again, Members of the Jury, just so that it is clear, all this testimony

(Testimony of George F. Kachlein, Jr.)

has a bearing on the credibility of either Mr. Forster or Mr. Taylor.

Q. (By Mr. Griffin continuing): Now, on or about April 4, 1950, did you have—do you recall a conference with [4956] Mr. Taylor in regard to his license in the State of Washington?

A. I do, sir.

Q. And will you tell the Jury did you have a conference with him about it?

A. I don't recall whether it was a conference or a telephone conversation but Mr. Taylor did advise me that he had received a letter from the State Accounting Board whereby they had notified him that his license was suspended and that if he desired to have a hearing on the matter he could do so. Mr. Taylor asked me what rights, if any, he would have with respect to the practicing of accounting in the event of the suspension of his license and what action he could take as of that time with regard to a hearing. We—I think that is about all that took place at that date, sir.

Q. Will you follow through as to that as to anything you did in that connection in behalf of Mr. Taylor as to the license?

A. Yes. I checked the statute, or had one of the men in the office check the statute, to find out what rights he had both as to a hearing and as to practicing even though a suspension was under way, and advised Mr. Taylor of that. Furthermore, I was [4957] contacted by Mr. Comer, C-o-m-e-r (spelling) I believe is the spelling of it, who was the

(Testimony of George F. Kachlein, Jr.)
Secretary of the State Accounting Board, and he asked me if Mr. Taylor would desire to have a hearing as of that time and what the status of his case was with respect to the Government. That is, the United States against L. Hicks Taylor. I advised him. Mr. Taylor and I discussed it further and following that I wrote to Mr. Comer in behalf of Mr. Taylor, with Mr. Taylor's approval, advising him of the position of Mr. Taylor, namely that we desired that we have a hearing subsequent to the time that final action was had on the sentencing of Mr. Taylor before Judge Leavy and that when the matter was finally determined in his criminal case then we would like to have the hearing.

Q. Was that arranged? Were you endeavoring to arrange it so that Mr. Taylor could personally appear before the Board, or whatever it is, in his own behalf? A. That is correct.

Mr. Griffin: Will you mark this?

The Clerk: Defendants' Exhibit Number A-145 marked for identification.

(Defendants' Exhibit A-145 marked for identification.) [4958]

Q. (By Mr. Griffin): And that, of course, could not be done while he was at McNeil Island?

A. That is correct.

Q. And is that what Mr. Taylor wanted to do, to make a personal appearance?

A. He certainly did.

Q. Handing you Exhibit A-145 for identification I will ask you if that is your office copy of April

(Testimony of George F. Kachlein, Jr.)

18, 1950, to the State Board of Accountancy, attention Mr. Comer, in regard to this matter?

A. Yes, it is.

Q. And was a definite arrangement made that no hearing would be had in regard to the suspension of Mr. Taylor, or any petition for reinstatement until after he had terminated his sentence?

A. No, at that time there was no arrangement along that line, Mr. Griffin. The only understanding that we had was to the effect that he would be given the opportunity to attend and be heard at a hearing after the case of United States against Taylor was finally determined, and that was not only after consultation with Mr. Comer, but also with another member of the State Accounting Board. [4959]

Mr. Griffin: I offer A-145.

Mr. LeSourd: No objection.

Mr. Moriarty: Except our usual objection, your Honor, that it is immaterial and entirely outside the issue.

The Court: The objection may show on the part of the Government. There being no objection from Mr. Taylor it may be *omitted.*

(Defendants' Exhibit A-145 admitted in evidence.)

Mr. Moriarty: We have inspected 144 and except for the same objection we have no objection.

Mr. Griffin: Well, on Counsel's objection I withdrew the offer of A-144. That was Mr. LeSourd's objection.

(Testimony of George F. Kachlein, Jr.)

Exhibit A-145 is dated April 18, 1950, attention Mr. Roy C. Comer. I read the last paragraph:

"It is the understanding of the undersigned and Mr. Taylor that this suspension shall remain in effect until final action is taken by the U.S. District Court in the Case of United States vs. L. Hicks Taylor, No. 16043, and that after such action is taken by said Court, the matter will then be up for further consideration by [4960] your Board, at which time Mr. L. Hicks Taylor will be afforded the opportunity of a hearing. In the meanwhile however, his license to practice as a Licensed Public Accountant is suspended."

Q. (By Mr. Griffin): Now, on—did you have a conference on or about April 17, 1950, with Mr. Coventry the Probation Officer in regard to Mr. Taylor and the contents of a letter which you had written him, which is in evidence?

A. I did, sir.

Q. As Exhibit A-142?

A. I did, sir, in Tacoma.

Q. And did you also confer with Mr. Sager?

A. I did, sir, at the same time in Tacoma.

Q. Then on or about April 18, 1950, was—did you, as attorney for Mr. Taylor, arrange with Mr. Sager for the sentencing of Mr. Taylor?

A. Yes, I did.

Q. And do you recall what date that sentence was to come on?

A. It was to come on April 25th at 10:00 a.m. in the morning, 1950.

(Testimony of George F. Kachlein, Jr.)

Q. In connection with the matter of sentence on April 18th, do you recall any conference with Mr. [4961] Taylor?

A. I don't know whether it was at that exact date or not but I had a conference with him because I had to prepare a statement that would be made in his behalf at the sentencing on the 25th.

Q. And did you go over with him the matter of the statement that you would make and that he would make to the court? A. I did, sir.

Q. And was the statement that he was to make satisfactory to you as his attorney and the one that you were to make satisfactory to him as your client?

A. So far as I knew, Mr. Griffin.

Q. Now, between April 18th and 19th and the date of sentence, April 25th, did you prepare a will for Mr. Taylor?

A. I did, sir, about the 22nd of April, as I recall. It was executed in my office on a Saturday morning.

Q. Now, on April 24th, the day before the sentence, did you have a conference with Mr. Taylor?

A. I don't know whether I had a conference with him or a telephone call, Mr. Griffin. I do know that I had one or the other, sir.

Q. Was there a Mr. Hall in your office? [4962]

A. Yes, there was, Ford Hall.

Q. Does that refresh your recollection as to any conference or telephone call? A. It doesn't.

Q. All right. Now, on April 25th what occurred?

A. On April 25th I——

(Testimony of George F. Kachlein, Jr.)

Q. (Interposing) Let me stop you there, before I go to April 25th.

Between the time of your first introduction to Mr. Forster on March 29, 1950 or March 30th—March 30, 1950, and April 28th, during that approximate month, did anything arise as between you and Mr. Taylor in connection with any tax matter of Mr. Forster?

A. Yes, there was one item that was called to my attention, somewhere between the 20th and the 25th of April, which dealt with the stock ownership of Finstad and Utgard and had relation to taxes. I had——

Q. (Interposing) Well, I won't ask you for any detail in that regard. That is the one item that arose?

A. That and the subsequent item was, as I recall, the afternoon of April 24th, the day [4963] before the sentencing. I did contact Mr. Taylor by telephone with respect to a telephone call I had had from Mr. Forster dealing with the investigation.

Q. All right; will you relate that? That is the incident I want you to relate to the Jury at this point.

Mr. Griffin: Mr. Moriarty says it is recess.

The Court: All right. Ladies and Gentlemen of the Jury: We will now take the mid-morning recess and the Court calls your attention to the admonition given you on similar occasions and asks that you heed it on this occasion.

You may now be excused.

(Testimony of George F. Kachlein, Jr.)

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 11:01 o'clock, a.m., a recess was had until 11:17 o'clock, a.m. May 6, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated. [4964]

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin continuing): I think, Mr. Kachlein, you were dealing with April 23rd, or April 24th, just before the sentence on April 25th and you had had a telephone call from Mr. Forster.

A. That is correct.

Q. What date was that?

A. That was on April 24, 1950.

Q. And that would be the Monday before the sentence on Tuesday then?

A. That is right.

Q. What was that call?

A. Mr. Forster called and advised me that a Treasury Department Agent had contacted him, a Mr. Marx, stating that he desired to examine the books and records of Mr. Forster and certain of his

(Testimony of George F. Kachlein, Jr.)

companies and that he had related that information to Mr. Taylor—to Mr. Taylor and that Mr. Taylor had stated, in effect, that they couldn't examine the books [4965] while Mr. Taylor was away as Mr. Taylor was the one that had them and knew all about the matter and that he didn't see how that could be done. Mr. Forster stated that he was disturbed about that position and what did I think about it. I told him that if the Government had determined to examine the books and records they were going to be examined and that something should be done to see that that was carried out immediately and that I would call Mr. Marx, providing it was satisfactory with Mr. Forster, and arrange for a date for a meeting to discuss it with him.

Mr. Forster stated it was satisfactory to him and that he was terribly concerned and didn't know which way to turn. I made the suggestion that it might be handled by employing a firm of accountants to look into the matter and assist him in the event of an investigation by the Government.

That was the conversation, in effect, that I had with Mr. Forster.

Q. Did Mr. Marx advise you they were investigating all the accounts of Mr. Taylor?

Mr. LeSourd: Objected to, your Honor, on the grounds this is not a conversation with Mr. Marx.

The Court: Objection sustained.

Q. (By Mr. Griffin continuing): Did you talk to Mr. Taylor about Mr. Forster's call?

(Testimony of George F. Kachlein, Jr.)

A. Yes. I called Mr. Taylor that afternoon. I had two things in mind. One was Mr. Forster's call and the other was to be set for the next day going over there. And then in discussing Mr. Forster's call I told him the conversation I had had and told him I didn't think we could postpone the examination until such time as he would return from prison and we didn't know at that time what his sentence, if any, would be. Therefore, I asked him to consider whether or not we should employ, in behalf of Mr. Forster, an accountant and discussed with him the possibility of taking some national accounting firm and that we would discuss it further as we went to Tacoma the next day.

Q. At about that time was a conference arranged with Mr. Marx?

A. I called Mr. Marx that afternoon also and told him I had had the conversation with Mr. Forster and as I was going to Tacoma the next day on the Hicks Taylor case I would appreciate it if we could have the conference the following day and it was arranged [4967] for ten o'clock in my office on Wednesday, April 26, 1950, which was satisfactory to him.

Q. Did you drive Mr. Taylor to Tacoma on April 25th?

A. Yes, I did. I picked Mr. Taylor up at his home and took him to Tacoma. Our appearance was set for ten o'clock in Judge Leavy's court in Tacoma.

Q. Now, on the way over did you have any dis-

(Testimony of George F. Kachlein, Jr.)

cussion with Mr. Taylor about this contemplated investigation by the Government of Mr. Forster's tax matter?

A. Yes, we had quite a lengthy conversation about it. It dwelt first on how the investigation would be handled in behalf of Mr. Forster. I told him I felt it was essential that we employ a reputable well-known national accounting firm to handle this matter by reason of the size of the operation due to the fact that Mr. Taylor who had been handling the books was not going to be there and suggested several names of national firms. Mr. Taylor, after listening to the suggestions that were made, indicated that he would prefer to have the firm of Touche, Niven, Bailey and Smart, the present accountants that Mr. Forster has, for two reasons: [4968]

One was that Mr. Alkire, who was one of the senior men in the firm, was formerly a government man and knew the routine of examination conducted by the government; and the second thing was that Mr. Tremper was on the accounting board and maybe by turning over some business to him of this nature it would help, *by* helpful, to him when his case on suspension would again be heard before the accounting board and we agreed mutually that I should recommend to Mr. Forster in behalf of Mr. Taylor and myself that that firm be employed and that firm carry out the investigation work in behalf of Mr. Forster and the accounting work.

We discussed how the work could be carried out.

(Testimony of George F. Kachlein, Jr.)

Mr. Taylor took the position—he felt—that even if they did come in, true they could keep the books and records going but insofar as the previous years were concerned it was going to be difficult for them to understand the transactions that had been going along but that he had taken out to Issaquah Creamery all the books and records and working papers that he had in his office and they would be there and available for their use in connection with the investigation.

Q. By "their use", who do you mean? [4969]

A. The accountants, any person who needed to go into the records to determine whether or not the taxes were properly reported.

Q. By the way, had you up to that time, which is now April 28th——

A. (Interposing): 25th.

Q. (Continuing): ——25, 1950, had you ever seen any of the books, records, working papers, or anything else of Hans Forster, Issaquah Creamery, Alpine Dairy?

A. No; none whatsoever with the exception of, I believe, the minute book and stock book of Finstad and Utgard.

Q. And when did you first see the minute book and stock book of Finstad and Utgard?

A. Well, I know it was not earlier than March 30th and I am quite sure in my mind that they were brought in that date. It may have been a day or two later. I am not certain of that.

Q. March 30th——

(Testimony of George F. Kachlein, Jr.)

A. (Interposing): March 30, 1950, sir.

Q. Now, at Tacoma at the time of sentence did Mr. Taylor make a statement in his own behalf of the nature you had gone over with him before?

A. Yes, he did, sir. [4970]

Q. Did he state he was very negligent in keeping his own records, and careless?

A. Yes, he did.

Q. And did you make a statement in his behalf?

A. Yes, I did, sir.

Q. And was that in part upon the same basis that Mr. Taylor had made his statement?

A. Yes, it was in part on that, yes, sir.

Q. Now, Mr. Taylor was sentenced that day?

A. He was sentenced that day, sir.

Q. Now, when you returned to Seattle, did you contact Mr. Forster in relation to this matter of the investigation and accounting?

A. I did, sir, and gave him a report of our conversation. That is, the conversation between Mr. Taylor and myself with respect to the accounting firm of Touche, Niven, Bailey and Smart.

Q. And did you receive any——

Mr. Griffin: Strike that.

Q. (By Mr. Griffin continuing): Did Mr. Forster advise you what he determined to do with reference to the employment of accountants then?

A. He said inasmuch as Mr. Taylor and I approved [4971] the accountants for me to go ahead and contact Mr. Tremper's office to see if they would be available to take on the job.

(Testimony of George F. Kachlein, Jr.)

Q. Then Mr. Forster did employ the accountants? A. That is right, sir.

Q. Then there was this conference that has been testified to here between Mr. Marx and the accountants and, I think, yourself and Mr. Forster on April 26, 1950? A. Yes, sir.

Q. Insofar as on that same date do you recall anything that you did in behalf of Mr. Taylor in regard to his civil liability?

A. Yes. As of that date I received a letter from Seth Stockton, who was then the Internal Revenue Agent, requesting extension of time for the determination of tax liability of Mr. and Mrs. Taylor and I believe I wrote him a letter on or about that date advising him that Mr. Taylor was at McNeil Island serving sentence but if he would forward the request over there, as it has to be signed by the taxpayer himself, I was sure he would do so.

Q. Now, was there any time limit involved in this matter of trying to protect Mr. Taylor in his [4972] personal income tax, on the civil side I mean?

A. Yes, there were several things. One which was pending at that time was a ninety day letter had been received by his wife, Mrs. Taylor, for the years 1946, and I believe 1945. Now, a ninety day letter, I mean by that a notice of an income tax deficiency wherein the taxpayer is given a period of ninety days with which to file a protest, or a petition, before the Tax Court of the United States for a determination of the tax and time was

(Testimony of George F. Kachlein, Jr.)
running out with respect to that. Secondly, interest was accruing on the unpaid portion of the tax deficiency and both Mr. Taylor and myself recognized there was substantial deficiencies. We were trying to get those straightened out to stop the running of the interest payments.

Q. Were you able—did you eventually file for Mr. Taylor and Mrs. Taylor a petition or protest in regard to the taxes?

A. Yes; in the month of May, the latter part of it, I filed a petition before the Tax Court in behalf of Mrs. Taylor to redetermine her tax liabilities for the year 1945 and 1946, and in the month of June I prepared and had Mrs. Taylor and Mr. Taylor execute petitions to the Internal Revenue—not petitions but [4973] protests—to the Internal Revenue Agent with respect to the income tax liabilities for the years 1942, 1943, 1944, 1947, and for Hicks Taylor for the years, the same years, together with 1945 and 1946. There was quite considerable correspondence between myself and Mr. Stockton, the Internal Revenue Agent, with respect to attempting to get a delay to file the protest until Mr. Taylor had returned, and on his instructions he told me to do the best I could with what information I had available and that when Mr. Taylor returned from prison that he would then have an opportunity to file a supplemental protest.

It was a matter that had gone on in correspondence between the latter part of March, 1950, and

(Testimony of George F. Kachlein, Jr.)
until these petitions had been—and protests had been—filed the latter part of June, 1950.

Q. With Mr. Taylor at McNeil Island were you able to get all the information that you required for a complete—what would ordinarily be a complete—protest or petition?

A. No. I attempted to get that. I went out one afternoon either in the latter part of May or the first part of June and met with Mrs. Taylor and asked——

Q. (Interposing): At their home? [4974]

A. At their home, and asked Mrs. Taylor to go through Mr. Taylor's papers, of if I could go through them, to find out if there were some work papers and books in connection with his income tax returns, as he had worked up figures, to try and determine his eventual liability and I obtained from her, if my memory serves me right, his cash book, or journal, whatever it may be called, or time book, and his working papers—oh, I would say they were twenty, maybe twenty, sheets—and took them back to the office with me and went through those to try and figure out what the taxes were that he felt that was due and owing. I couldn't do that so I filed what is known as a skeleton-type protest. It is one where you protest the amount and give very simple reasons but you don't give any basic figures because I didn't have the facts.

Q. And that skeleton protest was filed awaiting for you to get the information to file a real one?

(Testimony of George F. Kachlein, Jr.)

A. That is correct and with the full approval of Mr. Stockton.

Q. Now, these papers that you went out to Mr. Taylor's home and conferred with Mrs. Taylor about, do I understand those were the personal papers [4975] of Mr. Taylor dealing with his own personal income tax return?

A. Yes, Mr. Griffin.

Q. Did they have any relation of any kind, nature or description to the examination of Mr. Forster? A. None whatsoever, sir.

Mr. Griffin: Will you mark these three letters as one exhibit, please?

The Clerk: Defendants' Exhibit Number A-146 marked for identification.

(Defendants' Exhibit A-146 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-146 for identification I will ask you if the first is the letter of May 2, 1950, from Mr. Stockton, Internal Revenue Agent in Charge, to Mr. Taylor dealing with this matter?

A. Yes, it is.

Q. The second letter of May 2, 1950, is a duplicate of the first letter, is it not?

A. No, it is not. It has a different date in here for the years involved.

Q. The years involved, but also to Mr. Stockton —or Mr. Taylor? [4976]

A. It is identically worded otherwise.

(Testimony of George F. Kachlein, Jr.)

Q. And the third letter for the same date from Mr. Stockton to Mrs. Taylor?

A. That is right.

Q. These are familiarly known as the thirty-day letters in which you have thirty days to protest?

A. That is right, sir.

Q. And if you don't——

A. (Interposing): I believe that is. I didn't read the full context of it.

Mr. Griffin: I offer A-146.

Mr. Moriarty: Same objection, if your Honor please. It is entirely immaterial.

The Court: No objection from you, Mr. LeSourd?

Mr. LeSourd: No objection.

The Court: There being no objection from Mr. Taylor's Counsel the exhibit will be admitted on the same conditions as similar exhibits heretofore admitted.

(Defendants' Exhibit A-146 admitted in evidence.)

The Clerk: Defendants' Exhibit Number A-147 admitted in evidence.

(Defendants' Exhibit A-147 [4977] marked for identification.)

Q. (By Mr. Griffin): A-146 closes: "Your attention is called particularly to that part of the above-identified letter advising you that if no response is received within the 30-day period, a statutory notice of deficiency will be sent you."

A. That is correct.

Q. Handing you Exhibit A-147 I will ask you

(Testimony of George F. Kachlein, Jr.)
if that is a letter from Mr. Taylor to you dated May 3, 1950?

A. Yes, it is, which I received on May 6th.

The Clerk: Defendants' Exhibit Number A-148 marked for identification.

(Defendants' Exhibit A-148 marked for identification.)

Mr. Griffin: I offer A-147.

Mr. Moriarty: Same objection.

The Court: 148? 147?

Mr. LeSourd: No objection.

The Court: A-147 may be admitted.

(Defendants' Exhibit A-147 admitted in evidence.)

Mr. Griffin: May I read this letter, if the Court please?

A-147 is dated May 3, 1950, and shows a [4978] stamp received May 6, 1950, from L. Hicks Taylor to George F. Kachlein, 600 Central Building.

"Dear George:

"The boys are getting pretty swift now that I am over here, guess they are afraid of their calculation because they know they cannot substantiate their figures. Hope you can extend this thirty day letter so we can prepare a definite protest which will knock their figures in a cocked Hat. When I receive these letters they make you boil two days after I am committed here.

"Do we not have any rights until our release from here.

"I mailed you 872 last night and this tonight,

(Testimony of George F. Kachlein, Jr.)

so now George give them everything you have and extend the time so I can prepare a definite protest and make the boys sweat a little too like I am. Getting along alright here, turning farmer alright. Give my regards to everybody. Hicks."

Q. (By Mr. Griffin): That 872 is that a form?

A. That is a form consent for extension of time.

Q. Handing you Exhibit A-148 for identification I will ask you if the first is your office copy of a letter of May 8, 1950, to Mr. Stockton?

A. It is, sir. [4979]

Q. And the second letter from Mr. Stockton to you of May 9, 1950?

A. It is, sir.

Q. And the third, office copy, your letter to Mr. Stockton, June 7, 1950? A. It is.

Q. Next office copy, your letter to Mr. Taylor, June 9, 1950? A. It is.

Q. And the last copy your letter to Mr. Cavanah, Supervisor, Classification & Parole, McNeil Island, re Hicks Taylor, June 19, 1950?

A. It is, sir.

Q. All dealing with this matter to which you have been testifying?

A. It is, sir. They are, rather.

(Whereupon, there was a brief pause.)

Mr. Moriarty: Are they offered, Mr. Griffin?

Mr. Griffin: I am offering them now.

Mr. Moriarty: Same objection.

Mr. LeSourd: No objection.

The Court: There being no objection from Mr.

(Testimony of George F. Kachlein, Jr.)

Taylor's Counsel the Court will admit the exhibit on the same ground and for the same purpose [4980] as those admitted earlier this morning.

The Clerk: That is A-148, your Honor?

The Court: That is A-148.

(Defendants' Exhibit A-148 admitted in evidence.)

Mr. Griffin: A-148, the first letter, May 8, 1950, from Mr. Kachlein to Mr. Stockton seeks additional time for filing the protest and explaining conditions why.

The second letter is from Mr. Stockton dated May 9, 1950, to Mr. Kachlein in regard to the matter of extension and directing that that be filed by June 7th and then consideration be given to additional time for a full hearing on the petition.

So, on June 7, 1950, Mr. Kachlein to Mr. Stockton, dealing with the telephone conversation for additional extension.

June 9, 1950, Mr. Kachlein to Mr. Taylor:

"Dear Hicks:

"Am enclosing herewith Protests which I have prepared in quadruplicate for your signature. You will note that there are two sets of Protests, one covering your individual income tax returns for the years 1942, 1943, 1945, 1946 and 1947, and the other covering the joint return [4981] of you and Mrs. Taylor for the year 1944.

"Will you kindly review these, and if you find them in order, execute the same. It is important

(Testimony of George F. Kachlein, Jr.)

that immediate action be taken on the same as we only have until June 14th to file these Protests.

"We have arranged with the Internal Revenue Agent that if such protests are filed, you will at a later date, upon your release from the penitentiary, be given an opportunity to file a Supplemental Protest. In order to prevent a 90 day letter being issued, it is essential that we file these protests at once. Should you deem any statements contained therein are inaccurate, will you please make penned changes on each and initial the same. I will then have Mrs. Taylor likewise initial the 1944 one, and have her execute it also.

"In the execution of these protests, be sure to execute three sets, and have your signature acknowledged before a notary public.

"With kindest regards and best wishes, I remain, Sincerely."

"P.S. Enclosed is one extra set for you."

Q. (By Mr. Griffin): Those enclosures were made, were they?

A. They were, sir, and sent.

Q. And the last letter, June 16, 1950 a thank you letter to the supervisor for assisting in handling [4982] some matter and including—and in which you returned, duly executed, the codicil attached thereto. Did you draw a will for Mr. Taylor and—or a codicil, rather, and a will for Mrs. Taylor?

A. Yes, sir.

Mr. Moriarty: Objected to as repetitious.

(Testimony of George F. Kachlein, Jr.)

The Court: The codicil I don't think was covered before.

Q. Now, in connection with the office arrangement that Mr. Taylor had and referred to in your memorandum to the Government, Exhibit A-139, did——

The Court: Do you need it?

Mr. Griffin: No, I don't need it.

Q. ——did you have a conference with the associates of Mr. Taylor on or about June 28, 1950, in regard to how the office matter should be conducted of Mr. Taylor?

A. I did, Mr. Griffin.

Q. And there is in evidence A-74, memo for file, re L. Hicks Taylor, introduced in Mr. Taylor's case. Will you explain to the Jury just what that situation was and the advice given?

A. This memorandum I dictated in the presence of Mr. Benedict and Mr. Slater. Mr. Benedict and Mr. Slater were associates of Mr. Taylor. They had come to my office that day to discuss with me the office matter in connection with L. Hicks Taylor and Company. Prior to the time [4983] that Mr. Taylor went to McNeil Island Mr. Taylor had told me that in the event of any office problems arising he had instructed his men to come down to see me and that I would be the final judge in regard to any of the matters that arose as to what they should do. These men likewise stated to me when they came down that Mr. Taylor had stated in case any matters came up they should see me and whatever I

(Testimony of George F. Kachlein, Jr.)

determined to do would be satisfactory. They came down to see me because they were concerned over the fact that Mr. Taylor's license had been suspended to practice as a licensed public accountant and that the company of L. Hicks Taylor and Company had held itself out as doing tax work and audit work and doing accounting work and doing accounting work of all natures and these men themselves had a licensed L.P.A. certificate, or a Licensed Public Accountant certificate, issued by the State of Washington and they were worried as to work they had performed in Mr. Taylor's absence for L. Hicks Taylor and Company and billed as L. Hicks Taylor and Company, that they might be in violation of the State law and, likewise, Mr. Taylor might be in violation of the State law. I was familiar with the arrangements at that time, at least I thought I was [4984] with the arrangements which he had between his associates as during his income tax examination I had drafted, to reduce to writing, an oral arrangement that he and his associates had had. This arrangement is important to this matter here so if I may have permission to explain it I would like to do so.

Q. All right. Go ahead.

A. It is an agreement whereby Mr. Taylor and certain named associates set forth in writing what their arrangement was, which was this:

That he would turn work over to the associates and whatever work they performed as associates each would receive each month, if he received pay-

(Testimony of George F. Kachlein, Jr.)

ment for the work performed, two-thirds of the amount which was billed to the client, and the other one-third would go into a bank account in Mr. Taylor's name but for the account of the specific associate who was performing that work. That money would stay there until such time as the parties mutually agreed to release it or at such time as the associates left the firm and if the associates did not take the accounts away for the period of a year all that one-third would be turned over to the associate so that the associate would wind up with one hundred percent of the money. I knew of that arrangement [4985] and it was one reduced to writing. So that when these men came in they said they were bothered about the billing and how should they handle it in view that Mr. Taylor's license was suspended. As a result of our conference it was my best judgment that what should happen during the time Mr. Taylor was away from the office and had his license suspended and pending his return to the office was that the men should bill the clients in their own name and the funds which they received from the clients they should retain themselves until such time as Mr. Taylor returned. At that time then, between themselves and Mr. Taylor, they would work out the reasonable rental of the space they used and the reasonableness of any other matters which Mr. Taylor's office made available to them. Then, in addition, I stated that, of course, this was a temporary arrangement that was subject to the

(Testimony of George F. Kachlein, Jr.)

final approval of Mr. Taylor when he returned, stating at the end of it:

"* * * as this is but a temporary measure pending Mr. Taylor's return all matters will be subject to adjustment upon his return."

Q. Now, in doing that were you endeavoring to protect Mr. Taylor in the matter of restoration, [4986] if possible, of his own license?

A. Very much so.

Q. Did you take every step in the matter of the civil tax liability of Mr. Taylor that was necessary in your opinion to protect him in all of his legal rights?

A. I certainly did, sir, to the best of my ability.

Q. Now, in regard—there was some testimony in regard to Mr. Jack Taylor circulating a petition in regard to this suspension or restoration of license. Will you tell the Jury what you did in that particular when you heard about it?

A. Yes, sir. I was advised by Mr. Forster by telephone in one of the several calls that I had with him that he had been requested by Mr. Jack Taylor, the brother of L. Hicks Taylor, to sign a petition, or to join with him in petitioning, to get back for him his suspended license to practice as a licensed public accountant, to have the suspension lifted. That information came to me either on the 17th of August or 18th, I don't recall which, but it was during one of the conversations I had with Mr. Forster. I had had a telephone call from Mrs. Taylor on August 18th that she wanted to see me with

(Testimony of George F. Kachlein, Jr.)

[4987] respect to the making of a will. I was going —it was on a Friday. I was going to our beach place that we have on Whidby Island and I said I would drop by on the way up to find out what she had in mind. I had this meeting on the 18th in the afternoon and discussed the making of her will and also called to her attention that I was very much disturbed that Mr. Jack Taylor was circulating a petition to have the suspension of Mr. L. Hicks Taylor's license removed, that we had worked out an arrangement with Mr. Comer, who was Secretary of the State of Washington Accounting Board, whereby a hearing would be held at such time as Mr. Taylor, L. Hicks Taylor, was present to attempt to regain his license and that I felt that having some one going out circulating a petition was contrary to the letter arrangement which, I believe, has been introduced in evidence here that we had with Mr. Comer, and she told me she was going to be writing to Mr. Taylor and that she would so advise Mr. L. Hicks Taylor.

Q. In your best judgment was it an inappropriate time to be circulating such a petition while Mr. Taylor was still at McNeil Island?

A. That is right, it was, sir. [4988]

Q. Going back now to April, the conference with Mr. Marx on April 26, 1950, at which time Mr. Tremper, you and Mr. Alkire and Mr. Forster were present, do you recall any statements made by you with reference to the kind of bookkeeping of Mr. Taylor with which you were familiar from your

(Testimony of George F. Kachlein, Jr.)

experience with these other concerns?

A. I recall that we had a conversation while we were waiting for Mr. Forster to arrive. There was Mr. Alkire, Mr. Tremper and Mr. Marx. They arrived sharply at ten o'clock and came into my office and when Mr. Forster didn't arrive at the same time I placed a call for him to his office to see if he was on the way and was advised he was doing so, but we discussed then what was rather current interest to all concerned, namely the action which had been taken in Tacoma the previous day in the sentencing of Mr. Taylor. Mr. Marx had done the investigating work on it and Mr. Tremper was on the State Board of Accountancy and we discussed what would cause a situation to arise and I took the same position which I had taken before the Court and taken before the Treasury Department, that his work was careless.

Q. Was that said in defense of Taylor?

A. Absolutely, sir. [4989]

Q. And that he was just careless and negligent without any intent on his part to defraud?

A. That is correct.

Q. Now, do you recall about when Mr. Taylor was expected to return to Seattle after serving a sentence?

A. Yes; he was expected to return around the 10th or 11th of September. He had a six months sentence and with good behavior he was to get off at an earlier date and Mrs. Taylor kept me fully advised.

(Testimony of George F. Kachlein, Jr.)

Q. Prior to his return and on or about August 29th did you have a conference with Mrs. Taylor with respect to his anticipated return?

A. Yes; Mrs. Taylor came to my office and had a conference with me stating he was coming back and that they were planning a trip and wondered what I thought about it.

Q. Was that trip a vacation trip?

A. That is right.

Q. And what did you advise her about it?

A. I told her I thought it was the best thing in the world for him to do. She had explained to me from time to time that he had worked hard and that she would like to see him enjoy life with her and go [4990] places like other friends had done and she was hopeful of buoying his spirits up by planning the trip and this was a part of the plan to help him regain his stature when he got back to the community.

Q. Did this August 29th also happen to coincide with the first appearance, so far as you know of Mr. Eppler in the investigation of Mr. Forster's tax returns?

A. The first time I met Mr. Eppler was on that date to my knowledge, sir.

Q. Up until August 29, 1950, was there any indication of any kind to you that—any statement, rather than indication, to you that there was any claim of criminal liability insofar as Hans Forster was concerned?

A. No, sir, not to the best of my recollection.

(Testimony of George F. Kachlein, Jr.)

Q. Now, in this intervening time between May and August 29th were the Touche-Niven accountants and Mr. Gorans making their inspection and audit of the books and records of Mr. Forster?

A. Yes, they were.

Q. Had any report been issued as yet?

A. No, no official report. Every time I would talk with anybody from the office I was told that the tax liability was rising steadily and I [4991] was terribly concerned then.

Q. And did it continue to rise?

A. It continued to rise to astronomical figures.

Q. Now, did you have a conference with Mr. Taylor on Wednesday September 13th, 1950, immediately after his return from McNeil Island?

A. Yes, September 13, 1950, Mr. Taylor and Mrs. Taylor came into my office pursuant to the arrangement that I had with her where we had a conference.

Q. And what was the nature of that conference?

A. The first thing we discussed was Mr. Taylor's treatment at McNeil Island and how he got along. We then discussed what their plans were, what they intended to do, the trip they were going to make. Mr. Taylor advised that he wondered if he was going to be held for the Forster case because they—meaning Mr. Eppler and Mr. Marx—had been over to see him and attempted to get a statement from him and he refused to give that statement without having advice of counsel. He wanted to know a little bit about the Forster case

(Testimony of George F. Kachlein, Jr.)
and where it stood and I told him there was a substantial tax liability according to Mr. Tremper's office. I gave him a [4992] short run down what I thought of the situation as of that time and he asked if it was essential that he stay and I said, no, it is better that he got back on his feet again and took his vacation and when he got back there would be ample time to work on the books. We also discussed what work he might do and he made the comment, "Well, if they want me to do work on it they are going to have to pay me for it." It was not a lengthy conference, Mr. Griffin. I advised him at the time that I didn't want him to talk to the Agents until such time as he got back from his trip and that if they attempted to contact him to be sure and get ahold of me. He also stated, and I think this occurred just before he went out to the office, that he wanted to get his working papers and his books, whatever I had, with respect to his own income tax matter as he felt he would like to do some work on that portion dealing with his tax liability and I don't know whether I delivered to him that day the work papers that we had in our exhibit file, or the following day, but I delivered to him one day or the other. At the same time I contacted Mr. Marx by telephone to see if we could get back from the Government some of the work paper, or papers, that they had picked up for use in connection with their income tax examination [4993] of his records.

Q. That is, of Mr. Taylor's own personal papers?

(Testimony of George F. Kachlein, Jr.)

A. That is right, sir.

Q. Did you consider as of that time that you were, in regard to advising him about a vacation, in regard to advising not contacting the Agents until he had been away and got some rest, that you were working in his own best interest?

A. I certainly did, sir, and as a matter of fact the vacation had been planned by Mrs. Taylor prior to any income tax criminal investigation.

Q. Now, when next after September 13, 1950, did you see Mr. Taylor?

A. I don't know whether I saw him on the 14th or not. I know I talked to him on the telephone to give him a report on the records that the Government might have and I don't know whether he came into the office or whether it was by telephone but I know I had a conversation with him on that day in the morning and reported that I had contacted both Mr. Marx and Mr. McCarthy. McCarthy being of the Special Agents' Office, and Marx of the Internal Revenue Agents'. That was the contact that was made.

Q. Then when was the next time that you saw [4994] him?

A. The next time I saw him was in my office on October 27th of that same year, 1950.

Q. Now, in between September 13th and October 27th, 1950, what had happened in connection with the audit of Mr. Forster's affairs; what had you learned or been advised in that interim in connection with Mr. Forster's examination, or this audit?

(Testimony of George F. Kachlein, Jr.)

A. Well, I had been—I was out of town about a little bit better than two weeks during that period. I had assigned Mr. Brody in our office, about the 25th or 26th of September to do some investigation work for us. About the 18th or 19th, or maybe it was the 20th, of October, Mr. Brody had given me a report which indicated that certain of the records of Issaquah Creamery had been improperly reported and that I should check into the matter myself. I then contacted Mr. Erickson, who was the bookkeeper, and went up and had a rather lengthy conversation with him in which he related to me substantially the same thing as he related on the stand here——

Q. (Interposing): Had you ever——

A. ——in——

Q. Let me stop you a moment there. On the same thing related here, are you referring to the increase [4995] in accounts payable to $51,000?

A. $51,000.00 Consolidated checks, the milk drafts, and the R. L. Stevenson checks.

Q. Had you ever met Mr. Erickson before that occasion, so far as you know?

A. I think I met him on a--on my first trip through the plant of Mr. Forster which I believe was on a Saturday in July, 1950, when he wanted me to go around and see his various plants and I met the personnel. I had never talked to him about the income tax matter until that date, sir.

Q. Did he give you what he claimed were the

(Testimony of George F. Kachlein, Jr.)

facts as between himself and Mr. Taylor in making the changes as testified to here?

A. It was very difficult to get the story out of him. He tried to tell but I couldn't understand it myself. It was just—it seemed so utterly ridiculous at the time but it indicated that there was definitely a difference of opinion between the parties, namely, one person was saying, well, he did something to the records, and the other person was saying he did something to the records.

Q. So you had then that information before you at the time of your final conference with Mr. Taylor on October 27th? [4996] A. I did, sir.

Q. Did you look at the books while you were out there so that you saw the physical changes?

A. No, I didn't, sir.

Q. All right; on that, when was the first time that you personally ever inspected the books or records or work papers, or any of them, of the Forster enterprises?

A. Well, it was in—preparatory to this case. I mean, it was within the last five months. I have seen certain work papers on desks of Mr. Brody or desks of accountants but I have never inspected the books and records of these companies, Mr. Griffin.

Q. Now, what was the situation then existing as you viewed it on October 27, 1950, as of the time of this conference with Mr. Taylor?

A. I felt that there was a good possibility of a conflict between Mr. Taylor, Mr. Erickson, and

(Testimony of George F. Kachlein, Jr.)

Mr. Forster, and particularly between Mr. Forster and Mr. Taylor. I did so for two things—three things that had happened. When I had my conference with Mr. Taylor on the 13th of September I mentioned to him that the thing that was concerning us primarily in the Forster matter was the inability [4997] to determine the moneys which had been put into the 198 account and that that was Forster's personal account, as I was told, and Taylor took the position then—he said, "Well, I didn't know anything about his own personal affairs, I just looked after his books and I have got a stamp that I stamped on the returns and I am protected." That is the first flag that I had of any warning that there might be something different than what my understanding up to that date was. I attributed it, frankly, at that time to a man who had been incarcerated for a period of four months and something and who had been under conditions abnormal and that he was in an upset frame of mind and, therefore, I didn't give it too much weight at the time. Afterwards I did.

Mr. Griffin: Before we take up the two and three, it is recess time.

The Court: Ladies and Gentlemen of the Jury:

We will now recess until one-forty-five. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion. You may now be excused until one-forty-five.

(Testimony of George F. Kachlein, Jr.)

(Whereupon, the Jury retired from the Court room.) [4998]

The Court: You may step down.

The Witness: Thank you.

(Whereupon, the witness withdrew from the witness chair.)

(Whereupon, at 12:16 o'clock, p.m., a recess was had until 1:45 o'clock, p.m., May 6, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

Mr. Keesling: We object to the last portion of the testimony of Mr. Kachlein relative to conversation with Mr. Erickson. I move to strike all that portion for two reasons: One, it has no basis on the ground of the limited extent that this testimony is coming in—that is, to affect the credibility of Mr. Forster and——

The Court: (Interposing) I will ask Counsel if there be any objection to that.

Mr. Keesling: (Continuing) ——and that it is not proper rebuttal.

The Court: Is there any objection to striking it?

Mr. Griffin: Yes, your Honor.

The Court: You do? [4999]

Mr. Griffin: Yes.

Mr. Keesling: I refer to what the witness said and the observations of Mr. Erickson.

The Court: Well, Mr. Keesling, objection not having been made at the time, if Counsel object

(Testimony of George F. Kachlein, Jr.)
to it I don't think it should be stricken. The Court has already indicated the limits of it.

Mr. Keesling: It was in before I could object and it was in narrative style. I just want the opportunity to cross examine on it for Mr. Erickson in the event it isn't.

The Court: I assume if it stays in you are probably entitled to that.

Mr. Keesling: That is all I want.

Mr. Moriarty: The Government's position about all this matter is well known by this time.

Mr. Keesling: I think it is immaterial to begin with but I want the opportunity to meet it.

The Court: It may be that to avoid calling him back that the Court may strike it; only for that purpose but not because the objection was timely.

You may call the Jury.

If you wish to make the motion in the [5000] presence of the Jury, you may.

Mr. Keesling: I will not because I don't consider it that important.

The Court: Well, the Court will not recognize your motion and may not permit rebuttal.

Mr. Keesling: Then I will.

(Whereupon, the Jury was returned to the Court Room and the Witness resumed the witness stand.)

The Court: You may be seated. It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. Griffin.

Q. (By Mr. Griffin): Mr. Kachlein, you related the first of three matters that disturbed you between September 13th and your meeting with Mr. Taylor on October 27th, the first going to Issaquah and your conversation with Mr. Erickson. What were the two others?

A. The second thing was that at my meeting with Mr. Taylor on September 13th of 1950, when we discussed the Forster matter, he had stated that he [5001] didn't feel like he had any concern with respect to any tax deficiencies that may be made as he kept but the ledger and, secondly, he had a stamp that he placed upon the income tax return that would give him protection simply from facts and figures given to him by the bookkeepers and by Forster in connection with income tax returns.

The third thing that disturbed me was the fact that in my conversations with Mr. Eppler and Mr. Marx, Mr. Eppler in particular had taken the position that he felt that there was a conflict of interest developing and wondered what I was going to do about it. As I recognized that the agents in their examination sometimes have information that we don't have, that disturbed me. We had discussions with respect to it culminating in my meeting with Mr. Taylor on the 27th of October.

Those are the three things that in my mind made it imperative that I take some action to alleviate the situation.

(Testimony of George F. Kachlein, Jr.)

Q. Then you did have a conference on October 27th with Mr. Taylor? A. I did, sir.

Q. And will you state to the Jury the substance of that conference? [5002]

A. The conference took place, if my memory serves me best, in the morning of the 27th. Mr. Taylor came to the office either at a—as a result of a telephone call which he gave me or I gave him. I am not sure which. And when he arrived we discussed first his trip and secondly the problem that was before us which I had stated to him in the telephone conversation, that it was essential that we meet because I felt that a conflict of interest was developing in connection between himself and Mr. Forster and it was necessary for me to straighten that matter out. I explained to him that the Government agents and our own accountants had determined that there was substantial shortage of income for a period of years, that the books and records of the company were not in good shape, as a matter of fact, they were a mess, as was expressed to me by the accountants, that in going over the various transactions further that Mr. Forster took the position that he relied on all financial matters, the keeping of the records and books, on Mr. Taylor even to the extent of hiring and firing the accounting employees, that Mr. Erickson at a meeting I had had with him a few days before indicated that there were certain changes made in the books and records which reduced [5003] income which were improper, and for that reason, as a lawyer some-

(Testimony of George F. Kachlein, Jr.)

times finds himself in the place where you have two people that you have done work for, it was essential for me to either withdraw entirely from the case or, with the consent of both parties, represent one, and that he being the first client in time he would have—if Mr. Forster approved I could represent Mr. Taylor, or, if Mr. Taylor felt that it would be better I represent Mr. Forster, with his approval I could represent Mr. Forster. I explained to him that during the four month period a number of things had occurred wherein I had taken an active part in the Forster enterprises commencing in the first part of September by being placed on the Board and being made an officer of these companies in an effort to protect the interest of the Government against money going underground, or money being dissipated that could be used for the payment of income taxes under a procedure that had been worked out between Government officials, Mr. Forster, his accountants and his attorneys. Mr. Taylor expressed the opinion that he felt that he himself was not involved in the matter, again reiterating the same position he had taken with me on the 13th, namely that he had merely kept the ledger [5004] of the companies and had reported the income from the ledger and from the information furnished by Mr. Forster, Mr. Erickson, and the other bookkeepers involved, and lastly, he had that stamp that he thought protected himself. He believed that inasmuch as I had gotten into Mr. Forster's affairs very deeply from the standpoint of the management and

(Testimony of George F. Kachlein, Jr.)

protection of the assets that I should continue on with Mr. Forster and, if possible, recommend an attorney of his, that he could select to represent him.

We did look through the telephone directory. I mentioned the names of several attorneys that I knew were working in tax work that I felt were competent and capable, one of whom was Mr. LeSourd, and another was Mr. Jones, and two or three others. We discussed the background of some of them and as a result Mr. LeSourd was selected by us both. When that selection was made I called Mr. LeSourd at his office and asked him if he was in a position to come up, that I had a matter which involved a conflict of interest and would like to see if he could represent a client of mine. About ten minutes later Mr. LeSourd came to our office. I introduced him to Mr. Taylor and told him that I had [5005] been representing Mr. Taylor for several years and that I had certain income tax matters relating to Mr. Taylor that needed handling and that in addition to that there was a conflict of interest developing between Mr. Taylor and Mr. Forster in regard to the income tax investigation of Mr. Forster. We had a general discussion, the first part of it I can't definitely recollect. The arrangement seemed to be satisfactory. Mr. Taylor expressed the fact he had heard of Mr. LeSourd and was satisfied with him and an arrangement was made whereby Mr. LeSourd would take over in behalf of Mr. Taylor and I was to turn over the files

(Testimony of George F. Kachlein, Jr.)

in connection with the income tax returns and the income tax matter we had involving Mr. Taylor. After that was said I believe they left the office.

Q. Was there anything up to that point, so far as you know, of any unfriendly feeling or attitude of Mr. Taylor toward you?

A. None whatsoever. When he left he said he was pleased with the arrangement and he was hopeful we would be able to work together in connection with that.

Q. When did you first realize that there was an actual conflict of interest? [5006]

A. Oh, the earliest I can recollect is in November or December of 1950 when further investigation of the changes in the year-end 1949 matter were gone into.

Q. Those matters referred to changes in Mr. Taylor's ledger and work sheets?

A. That is right.

Q. By Mr. Taylor? A. That is right, sir.

Q. Did you have any conference other than you testified to in connection with this matter with Mr. Eppler in August, September, or prior to this meeting of October 27th?

A. Well, I testified to the first meeting I had with Mr. Eppler, August 29, 1950, at the office of Touche, Niven, Bailey and Smart when I first met him. I had a second conference with him in the office of Mr. Stockton that same afternoon where present there was Mr. Stockton, Mr. Marx, Mr. Frank, Mr. Eppler, Mr. Forster, Alkire and Trem-

(Testimony of George F. Kachlein, Jr.)

per. That was the second conference. The next time that I either talked or met with him that I can recollect is a telephone conversation with him on the morning of September 6th when I called him in respect to a telephone call that I had had from Mr. [5007] Tremper. The next conference that I had with Mr. Eppler that I can recollect was on or about the 16th of October of that year which was a rather lengthy one. I did have one or two telephone conversations with him during the interim. One was about October 5th and the other one was either with Mr. Eppler, or Mr. Marx, on the afternoon of September 13th, or the morning of September 15th—14th, rather—September 13th or 14th. That is prior to October 27th, as I understand, Mr. Griffin.

Q. Anything in connection with that September meeting other than the statements that you have referred to that you recall of Mr. Eppler suggesting a conflict?

A. On September 6th the telephone call was in response—my telephone call to Mr. Eppler was in response to a call that I had from Mr. Tremper. Mr. Tremper called to advise that Mr. Eppler was requesting that Mr. Tremper turn over to him certain work papers of Mr. Taylor that he, Tremper——

Mr. Moriarty: May I suggest that there is no dispute about this conversation with Mr. Eppler?

The Court: The only part that has to do with conflict has any bearing. [5008]

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: It hasn't any bearing that I can see.

Mr. LeSourd: I think it does, your Honor.

The Court: My recollection is that there was some statement regarding that.

The Witness: May I proceed, sir?

The Court: You may.

A. (Continuing) As I stated, Mr. Tremper had advised me that Mr. Eppler had requested that Mr. Tremper turn over to him certain work papers which were in the possession of Mr. Tremper at the time and Mr. Tremper asked me what he should do with respect to it. I told him that in my opinion he would be required to turn those papers over to Mr. Eppler if he was served a summons but that I would call Mr. Eppler and see if we couldn't retain them for the time being. I called Mr. Eppler and while Mr. Eppler testified he thought it was a long distance call it actually took place from my office. I called him and the conversation as related by Mr. Eppler is substantially the same as I recall, Mr. Griffin, namely that he made request for the delivery of the papers. I told him I thought that they were privileged. He stated that he thought he could get [5009] possession of them and that a foot race might develop. I told him I thought I could get them back in my office and might hold them and that a foot race might develop and eventually it wound up he did want them and my own opinion was he had the right to them if he served a sum-

(Testimony of George F. Kachlein, Jr.)

mons and I told him if he served a summons on Mr. Tremper I would call Mr. Tremper.

Q. (By Mr. Griffin): Have you confirmed your opinion that he was entitled to them?

A. No question about that, sir.

Q. Did you turn them over to Mr. LeSourd all of the documents, papers, whatever they may be—may have been—of Mr. Taylor's involving both his criminal and civil matters?

A. To the best of my ability, yes, sir.

The Clerk: Defendants' Exhibit Number A-149 marked for identification.

(Defendants' Exhibit A-149 marked for identification.)

Q. (By Mr. Griffin): Handing you Exhibit A-149 for identification I will ask you if this is a letter of March 1, 1951, from Mr. LeSourd to you?

A. Yes, sir. [5010]

Q. Your reply of March 16, 1951, office copy?

A. Yes, sir.

Q. And Mr. LeSourd's letter to you, March 19, 1951, dealing with that matter? A. Yes, sir.

Q. The conflict having developed in which you withdrew as attorney for Mr. Taylor, did you ever make Mr. Taylor any charge for all the services rendered to him subsequent to the hearing in court in Tacoma on April 25, 1950?

A. I did not, sir.

Q. Did you serve him throughout to the best of your ability as a member of this Bar?

A. I did, sir.

(Testimony of George F. Kachlein, Jr.)

Mr. Griffin: I offer in evidence A-149.

Mr. LeSourd: No objection.

Mr. Moriarty: A continuing objection.

The Court: There being no objection from Mr. Taylor's counsel, the exhibit will be admitted as similar exhibits have been admitted today. Members of the Jury: the same limitation.

(Defendants' Exhibit A-149 admitted in evidence.)

Q. (By Mr. Griffin): The first is a letter, March 1, 1951, on [5011] the letterhead of Little, LeSourd, Palmer and Scott, to Mr. Kachlein, "Re: L. Hicks Taylor."

"Dear George:

"Mr. Taylor has asked me to get from you his entire file, including all material relating to his tax matters, both criminal and civil, and those of his wife, and all personal papers of himself and wife, including wills. If you desire a letter in writing from him, I will be pleased to get the same.

"Also, we should have the withdrawal of yourself and Charlie Osborn * * * "

That is an associate?

A. A partner of mine.

Q. " * * * under the powers of attorney heretofore executed by Mr. and Mrs. Taylor. We talked about that matter before, and I am not sure but what you have already sent such a withdrawal in. If so, please ignore this request."

In representing a taxpayer before the Internal

(Testimony of George F. Kachlein, Jr.)

Revenue Bureau you have to have a particular power of attorney, do you not?

A. That is correct.

Q. Or they won't recognize the lawyer?

A. That is right.

Q. "Further, we should have your withdrawal as attorney [5012] in the cases involving Mrs. Taylor which I am informed are pending in the Tax Court. I assume that the copies of the Tax Court petition and other documents will be among the papers that you will send to me.

"Very truly yours,"

Signed, "Fran"; underneath, "F. A. LeSourd."

Second, March 16, 1951, Mr. Kachlein's letter addressed: "Dear Fran"; and itemizing the enclosures being sent to Fran.

And the last letter, March 19, 1951, addressed "Dear George"; again signed "Fran," acknowledging receipt of the documents.

And as of that time, 1951, did you ever hear any claim made or asserted as has been in this court room by Mr. Taylor or his counsel?

A. No, sir.

Q. And at any time did either Mr. LeSourd or Mr. Cox or anyone from that firm confer with you to ascertain what the facts of your employment were and the manner of your withdrawal of representing Mr. Taylor? A. No, sir.

Q. Just the charge made here in this court room? A. Yes, sir. [5013]

Mr. Griffin: You may inquire.

(Testimony of George F. Kachlein, Jr.)

Mr. Moriarty: At this time the Government moves to strike the testimony of Mr. Kachlein as immaterial and irrelevant and under the position that the Government has taken we indulge in no cross examination.

The Court: Motion denied.

Mr. Keesling, do you have something?

Mr. Keesling: I may want to cross-examine after Mr. LeSourd.

The Court: I am inclined to think in the interest of saving time, there being some indication by Mr. Keesling in the absence of the Jury, that certain portions of Mr. Kachlein's testimony relating to Mr. Erickson are not material to the matter now before the Jury, if it remains the Court would feel that Mr. Erickson is entitled to rebuttal to meet that. Therefore, the Court for that reason believes that that portion of the testimony of Mr. Kachlein wherein he related his conversation and discussion with Mr. Erickson should be stricken and disregarded completely. It would have no relation otherwise, as I understand it.

You may proceed. That will eliminate cross examination or rebuttal on that. [5014]

Mr. Griffin: Exception.

The Court: The exception may show.

Mr. LeSourd: What order does the Government want the cross examination?

The Court: The Government, in view of their position, waives cross examination.

Mr. Moriarty: No interest in the controversy.

(Testimony of George F. Kachlein, Jr.)

Mr. LeSourd: Very well. [5015]

Cross Examination

Q. (By Mr. LeSourd): Mr. Kachlein, you mentioned in your examination that Mr. Taylor had bought some clients into your office in the years before he got into trouble who had some controversy with the Bureau over family partnerships?

A. Yes, sir.

Q. These family partnership cases involved legal questions as to the validity of these partnerships, did they?

The Court: May I interrupt a moment, Mr. LeSourd?

Mr. LeSourd: Yes, sir.

The Court: I think my striking of that testimony is quite broad. I don't mean to strike, Members of the Jury, the testimony relating to the fact that Mr. Kachlein went out to see Mr. Erickson and of his books. I strike only the conversation.

Mr. Keesling: I think there was one other matter. He made some observations about the conversations.

The Court: Well, any observation or conclusion he may have made as to Mr. Erickson or [5016] state of mind, I won't strike that.

Mr. Griffin: I was under the impression that what your Honor meant to strike was Mr. Kachlein's observation of what Mr. Erickson told him.

The Court: Yes.

Mr. Keesling: That is what I am referring to, his observations on the conversations.

(Testimony of George F. Kachlein, Jr.)

The Court: Yes.

Mr. Keesling: Not that he had a conversation. I have no objection to that.

The Court: I believe it is clear. I am sorry, Mr. LeSourd.

Mr. LeSourd: That is all right.

Q. (By Mr. LeSourd continuing): Mr. Kachlein, the problems involved in these family partnerships were problems of the status of the partnerships for tax purposes?

A. The first case was, Mr. LeSourd. The second case had family partnership status together with other matters.

Q. It had some depreciation matter in addition?

A. Depreciation and business expense as against personal expense. [5017]

Q. And these family partnership matters, the courts were in some confusion at that time as to the applicable rules, were they? A. Yes, sir.

Q. And that was finally determined by a Supreme Court decision? A. Yes, sir.

Q. Now, is it your testimony that not until November, I believe you said, of 1950 did you realize there was a conflict in your representation of Mr. Forster and Mr. Taylor?

A. That isn't quite it. I stated that I realized that there was this conflict—it looked to be a conflict—when I met with Mr. Taylor on the 27th, sir.

Q. Is it your testimony that you had no realization of a conflict prior to that time?

(Testimony of George F. Kachlein, Jr.)

A. There was a possibility of a conflict prior to that time, yes.

Q. When did you first realize the possibility of a conflict?

A. In October, about the 23rd or 24th, sir.

Q. When you went out to Issaquah?

A. Yes, sir.

Q. And that was the very first time? [5018]

A. Yes, sir.

Q. (Continuing) That you realized the possibility of conflict?

A. Well, now, possibility of a conflict existed from the very first time that an Internal Revenue Agent walked in to Mr. Forster's business. I mean, there could be a conflict of interest, and insofar as this case is concerned—I mean Mr. Taylor and Mr. Forster—the possibility of conflict did not exist in my mind until the meeting that I had with him on September 13th, wherein he had made the statement that he was not worried with respect to his own self as he kept the records as to the ledger accounts and that he did not go further than that. That was the first time that there was the possibility of a conflict in my mind resulting. I felt that was the result of a man who had been incarcerated for a period of time coming back upset and having been interviewed, or attempted to be interviewed, by the Government agents. He was mentally disturbed about it, Mr. LeSourd, and it disturbed me, too.

Q. Did you ever state, Mr. Kachlein, to anyone prior to October 27, 1950, when you severed your

(Testimony of George F. Kachlein, Jr.)

relations with Mr. Taylor that Mr. Taylor or his accounting was responsible for Mr. Forster's tax position, [5019] or words to that effect?

A. I think I did, sir.

Q. Will you tell us when and to whom?

A. I think on the 26th of October I had rather a lengthy conference with Mr. Eppler and Mr. Marx. It lasted, approximately, oh, I would say, three hours. It involved many matters in connection with the Forster investigation. First, if—may I relate the full conference?

Q. Go right ahead, sir.

A. First they were concerned over the fact that the information which they had requested from the accounting firm they were not——

Q. (Interposing) Just a moment. I am simply asking whether you made such a statement and when, and what the statement was.

A. During the period of the conversation the question arose as to could I explain how such a substantial deficiency had resulted? I said I thought that it was due to the faulty, sloppy, poor accounting of Mr. Taylor.

Q. Now, was this the first time you had made such a statement?

A. As far as sloppy accounting?

Q. A statement as far as sloppy accounting of Mr. [5020] Taylor in connection with Mr. Forster's tax trouble?

A. I may have made it earlier than that, sir.

(Testimony of George F. Kachlein, Jr.)

Q. Can you tell us when you may have made it? When you did make it earlier than that?

A. I think one of the questions was asked, either myself or Mr. Forster, at a meeting with Mr. Frank, Mr. Stockton, on August 29th when——

Q. And you made such a statement then?

A. Yes.

Q. Did you make such a statement earlier that day also? A. I don't recall, Mr. LeSourd.

Q. Did you—did it not make you believe there was a conflict in your representation of these two parties when you made such a statement?

A. No, I didn't think so because sloppy bookkeeping didn't mean fraudulent actions.

Q. Is it customary for an attorney to blame another person's tax troubles on his clients' bookkeeping, or any other action?

Mr. Griffin: If a fact.

A. Will you repeat the question?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

The Court: Is that material to this matter?

Mr. LeSourd: I believe it is, your Honor.

The Court: The custom?

Mr. Griffin: The question entirely general. I will object to it. I didn't want to. The question is improper as to custom. What is the fact?

The Court: Sustain the objection as to custom.

Q. (By Mr. LeSourd continuing): Well, is it your practice to do that, Mr. Kachlein?

(Testimony of George F. Kachlein, Jr.)

A. No. These were rather peculiar circumstances, Mr. LeSourd. Here you had Mr. Marx who had worked on the Taylor case being the same agent that was working on the Forster case. You had him also working on another case involving a client of Mr. Taylor's. You had certain facts which, where you deal with a person, become apparent. You had facts which both of us had knowledge of which clearly showed that his type of accounting was sloppy, was not carefully done. Both of us knew it. So that our [5022] comments were like two peoples working alongside one another. It wasn't done with any idea of harming Mr. Taylor. It was the fact.

Q. Now, in the meeting of April 26, 1950, with Mr. Marx, did you make a similiar statement with respect to Mr. Forster's problem, that they were undoubtedly due to Mr. Taylor's sloppy accounting, or words to that effect?

A. No, because I didn't know what condition Mr. Taylor's—Mr. Forster's—books were in.

Q. You heard Mr. Marx's testimony to that effect?

A. I heard Mr. Marx's testimony to that and his testimony wasn't that, sir.

Q. Now, correct me if I am wrong. I recollect his statement to be that you said that if there were any errors or anything wrong with Mr. Forster's return that it was undoubtedly due to Mr. Taylor's sloppy accounting. Am I in error in that recollection?

(Testimony of George F. Kachlein, Jr.)

A. I think that recollection is quite correct. That is different from the first statement, though.

Q. I am sorry. I didn't realize it was. Did you say that Mr. Marx's statement of your conversation is incorrect? [5023]

A. I don't recollect saying that. I have no reason to doubt Mr. Marx's statements, however. As, again I say, both Mr. Marx and I had worked on Mr. Taylor's case. We had discussed Mr. Taylor's case that morning because it was fresh in everybody's mind and I might have said that, sir.

Q. Mr. Marx said you stated it in connection with Mr. Forster's case. Do you say you don't recollect? A. I do not.

Q. Would you deny that you made that statement?

A. I have no recollection of it. I could have made it and I could not have made it, sir. I don't know.

Q. Wouldn't that statement call to your mind the fact that there was a conflict in the representation of these two men?

A. I didn't make the statement to the best of my recollection, sir.

Q. But you don't deny that you did?

A. No, I don't deny it because I have no recollection of it, Mr. LeSourd.

Q. Did you make any memorandum of that conversation? [5024]

A. No, I made no memorandum of that conversation. The memorandum was made by Mr.

(Testimony of George F. Kachlein, Jr.)

Tremper and a copy of the memorandum was furnished Mr. Marx.

Q. Mr. Marx did make a memorandum?

A. The first time I knew that he made a memorandum was when I heard of it in this court room, sir.

Q. Yes.

A. And that memorandum was not made in my presence or at that meeting.

Q. Now, you went on after that all through the summer and fall handling various legal matters for the Taylors? A. I did, sir.

Q. And when was the first time that you felt that there was a possibility of a prosecution in this case or a charge of fraud?

Mr. Griffin: That is a double question.

Mr. LeSourd: I will change it.

Q. (By Mr. LeSourd continuing): When did you realize there was a possibility of a fraud charge in this case?

A. The day that the—that Mr. Eppler came into the case, which was August 29, 1950. There was [5025] a possibility but not a probability.

Q. I am talking about a possibility. Not prior to that time? A. No, sir.

Q. The conference in April—the 26th—1950. Mr. Marx informed Mr. Forster of his Constitutional rights, didn't he? A. Yes, sir, he did.

Q. That is asked only where there is a possibility of fraud, isn't it?

A. Not necessarily, Mr. LeSourd. There was no

(Testimony of George F. Kachlein, Jr.)
discussion at that meeting whatsoever of any possible fraud charges. As a matter of fact, the statement was made by Mr. Marx that inasmuch as Mr. Taylor had pled guilty to fraud in his own return they were making an examination of his major accounts, and this was one in which we were asked to make a preliminary survey. That is, "we", referring to the accountants to do that, and asked us to make checks to see if there was anything wrong. Now certainly that didn't infer criminal prosecution or the possibility of it in my mind, sir.

Q. During the summer you got advice from Touche-Niven of increasing amounts of deficiencies I think you said. [5026]

A. That is right, sir.

Q. And that raised no question in your mind at that time?

A. Well, it didn't because the way the advice was given indicated that the facts as I understood them to be then were that the books were in a mess, that there seemed to be no consistencies between the companies, that the records were of such shape that they were not of too great a value to the accountants in determining the income or the loss or the net worth of the company, or companies, and the accountants would not make any statements to me as to any specific things that were going along until actually they checked them out but I was told that first of all there might be two hundred thousand dollars unstated, three hundred, four hundred, five hundred, until it got up to a rather substantial

(Testimony of George F. Kachlein, Jr.)

amount that showed, possibly, tax liability of four hundred to five hundred thousand dollars in about the tenth or twelfth of August, 1950. At that time I discussed the matter with Mr. Forster to see whether or not we could—he was in a position to raise sufficient funds with which to pay that tax liability; even went to his bankers to see what type of a loan could be made. [5027]

Q. You knew at that time there was a serious problem presented, didn't you?

A. Of civil liabilities, yes, sir.

Q. Now, I believe you testified that about the 18th of August you had a call from Mr. Forster?

A. That is right, sir.

Q. Concerning Jack Taylor's petition for Hicks Taylor?

A. It wasn't quite that. I said several matters including the request of Jack Taylor.

Q. I see; and you made an appointment to see Mrs. Taylor?

A. That isn't correct, sir. I stated Mrs. Taylor called me to discuss with her the matter in connection with drafting a will for her and I made an appointment to go to her home.

Q. Isn't it a fact you called her after receiving Mr. Forster's call and made an appointment?

A. That isn't correct, sir. She called me, Mr. LeSourd.

Q. In any event, you went out to her home?

A. I did, sir.

Q. What was so important about Jack's peti-

(Testimony of George F. Kachlein, Jr.)

tion, or the will, to cause you to go out to her home [5028] rather than have her come in?

A. I was going to the beach for the week-end. It was Friday. I live on Whidby Island. It was on my way out that I dropped in to see her.

Q. Is it your practice to drop in to see clients that you are making wills out for, or do you have them come to your office?

A. I do both ways, Mr. LeSourd.

Q. There was no urgency about this will, was there? A. No, there was none.

Q. Now, did you tell Mrs. Taylor that Jack's petition was not in accordance with your plans?

A. Not in accordance with the plans we had worked out with Mr. Connor who was secretary of the Washington State Accountancy Board.

Q. Now that was, you say, the plan that you were referring to in talking to her? A. Yes, sir.

Q. And what in that would make it inadvisable for Mr. Taylor's clients to express their confidence in him?

A. There was nothing that is wrong in them expressing their confidence in him but I thought he was attempting to get back, in advance of the hearing, [5029] Mr. Taylor's L.P.A. Certificate when we had arranged with them that upon his release we would have a hearing and the full matter would be aired. You see, Mr. Taylor—Jack Taylor—did not contact me, did not discuss it at all, to my best recollection, sir.

Q. And you didn't call him?

(Testimony of George F. Kachlein, Jr.)

A. No, I didn't. I didn't know him. The first time I ever saw him was in court here.

Q. And how would it have prejudiced Mr. Taylor before the Accountancy Board if he had petitions from his clients expressing confidence in him?

A. I thought I was representing Mr. Taylor and I thought if anything was to be done in connection with him L.P.A. License it should come through me.

Q. And you were representing Mr. Forster also?

A. That is correct, sir.

Q. Now, did you know that Mr. Taylor was returning in a few weeks to Seattle?

A. Yes, I knew he was going to return in September because Mrs. Taylor and I discussed it.

Q. Why didn't you have Jack keep the petitions and simply hold them for this hearing?

A. I felt as Mr. Taylor was coming back in a few weeks it was better for him to sit down and work [5030] out the program. Getting back his license was going to be difficult in my opinion.

Q. No doubt, and having expressions of confidence from his clients would have helped, wouldn't it? A. No question about it; right, sir.

Q. Now, on August 29th when you say that you stated to the Internal Revenue people that Mr. Forster's deficiencies were due to Mr. Taylor's sloppy accounting—am I stating that correctly, Mr. Kachlein?

A. Well, I think to put it more correctly, Mr. LeSourd, when the question was asked what caused

(Testimony of George F. Kachlein, Jr.)

these things the answer that was given, I believe, to the best of my recollection, was that the financial affairs, the books, the records and the looking after the financial affairs were Mr. Taylor's responsibility and if there were errors in connection with them it was something that he was responsible for.

Q. And you made that statement in behalf of Mr. Forster as a defense for him?

A. I believe I did, yes, sir.

Q. If you made a similar statement April 26th it would be for the same purpose? [5031]

A. No, because I didn't know anything was wrong with the books on April 26th.

Q. Now, on September 6th you instructed Touche-Niven to deliver these papers, did you?

A. No, I told them that they could deliver the papers if a summons was served upon them.

Q. And you did raise the question of privilege?

A. I did, sir, yes.

Q. If they were privileged they couldn't have secured them by summons, could they; if they were privileged and in your hands?

A. Well, that one is assuming something, because they would not have been privileged even in my hands, Mr. LeSourd, as the Courts have held.

Q. Well, at the time, however, you expressed the statement to Mr. Eppler, didn't you, that they were privileged? A. That is right, sir.

Q. But still you permitted them to be surrendered?

(Testimony of George F. Kachlein, Jr.)

A. Because they were not privileged, in my opinion.

Q. And did you do that as a part of your co-operation for Mr. Forster on behalf of the Government? [5032]

A. No. They were papers I had never seen. I didn't know anything about them. I got a call at 9:00 in the morning from Mr. Tremper stating that the Government desired to have the papers, what should they do, they were Hicks Taylor's work papers. I said, "I don't think we can hold them back.", and he said, "They aren't very helpful as far as we can see." I said, "I will try and hold them until Mr. Taylor gets back," or words to that effect, and when I called Mr. Eppler I tried to retain them to the best of my ability, knowing that legally he could get them.

Q. You didn't consult with Mr. Taylor about releasing those?

A. No, sir, I did not. I was exercising my best judgment on the matter, sir.

Q. Now, the defense that you expressed for Mr. Forster at the August 29th meeting is the same defense that you followed throughout this case for him, isn't it?

A. Yes, I would say so, if you are talking about defense of his actions.

Q. I am talking about defense of Mr. Forster in this case. A. Yes, sir. [5033]

Q. Now, on September 13th when Mr. and Mrs.

(Testimony of George F. Kachlein, Jr.)

Taylor came to your office, did you advise Mr. Taylor of any conflict?

A. No, sir, because I didn't think there was a conflict.

Q. You did not think there was a conflict?

A. No, sir.

Q. It was Mr. Eppler who raised the question with you as to a conflict?

A. I believe it was, sir.

Q. He could see the conflict and you couldn't?

A. Well, that isn't quite true, Mr. LeSourd. From the very start of the investigation I think that Mr. Eppler took the position—at least I got the inference in dealing with him—that he was attempting to split the three parties and he was trying to drive a wedge to the best of his ability and one of the ways to drive a wedge is to try and create a conflict and that is the impression I had in working with him in the conferences I had with him, sir.

Q. And you were not trying to let any wedge develop? A. That is correct, sir.

Q. In stating to the Government that Taylor's troubles—Mr. Forster's troubles—were due to Mr. [5034] Taylor's account was not driving a wedge?

A. Was due to his sloppy accounting, sir, his negligence in accounting; not anything intentional or wilful on his part.

Q. Did you advise Mr. Taylor on September 13th or at any time before or afterwards that you were making such statements to the Internal Revenue people?

(Testimony of George F. Kachlein, Jr.)

A. On September 13th I did not.

Q. Did you advise him that at any other time?

A. On September 27th I stated to him that Mr. Forster had taken the position that he, Mr. Taylor, was in charge of the books and that any errors or shortages of income were due to his bookkeeping.

Mr. Griffin: Excuse me. You said September.

The Witness: I mean October 27th. I am sorry.

Q. (By Mr. LeSourd): Did Mr. Forster take that position on your advice?

A. No, sir, he took it on his advice of his own. I mean his own actions, sir.

Q. His own actions. Now, didn't you sometime prior to October 12th advise Mr. Eppler that you [5035] could not longer represent Mr. Taylor?

A. No, sir, I did not. I had a conversation with him by telephone on October 5th but that was not my statement to him.

Q. Did you advise him that you had a conflict of interest?

A. No, sir; I said if there was a conflict of interest then, of course, I would have to remove myself from the case or handle only for one client or take some action with respect to it. It was not until the 26th of October, to the best of my recollection, Mr. LeSourd, that I stated that I believed a conflict developed and I would have to take some action in order to straighten the matter up and I believe Mr. Marx was there at the time.

Mr. LeSourd: May I suggest a recess at this time, your Honor?

(Testimony of George F. Kachlein, Jr.)

The Court: All right. Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given on similar occasions and asks that you heed it on this occasion. You may now be excused.

(Whereupon, the jury retired from the court room.) [5036]

(Whereupon, at 1:43 o'clock, p.m., a recess was had until 2:59 o'clock, p.m., May 6, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor, so stipulated.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Q. (By Mr. LeSourd): Mr. Kachlein, at the August 29th meeting, two meetings——

A. (Interposing) Yes, sir.

Q. (Continuing) ——with the Internal Revenue people, did you appear at those meetings as Mr. Forster's attorney? A. Yes, I did, sir. [5037]

Q. Did you appear as Mr. Taylor's attorney?

A. Not of record, sir, no. I had no power of at-

(Testimony of George F. Kachlein, Jr.)

torney from him covering that year, sir, or those years where Mr. Forster was involved.

Q. Did you tell these people at that meeting that you were representing Mr. Taylor?

A. I don't recall of having done so, Mr. LeSourd.

Q. You made these statements as Mr. Forster's attorney?

A. I made statements as Mr. Forster's attorney. Mr. Marx was present at the meeting. Mr. Marx and I had sat through a number of matters involving Mr. Taylor. He knew that I was Mr. Taylor's attorney.

Q. Now, when you went out to see Mrs. Taylor with regard to Jack's petition are you certain that you talked about a will at that time?

A. I am quite sure of it, sir, because that was on the 18th and on the 20th or 21st, 22nd, I drafted a will and I think on the 25th the will was executed. I don't have it in my files. I turned them over to you. The copies and original to Mrs. Taylor, but my recollection is that Mrs. Taylor called me. I am sure of that part. [5038]

Q. You are sure she called you?

A. Yes, sir, because it shows on our own telephone call sheets in the office.

Q. She came in to the office, did she, with regard to that will?

A. She came in later with regard to the will.

Q. She came in with regard to the will later?

A. Yes, sir.

Q. And gave you the information for it?

(Testimony of George F. Kachlein, Jr.)

A. No; gave me the information, the original information, at her home. There were a couple of items she wasn't certain as to what she wanted to do with. She called me, I think, on the 21st or 22nd, Mr. LeSourd, and I made a draft of the will and I redrafted the will on the 25th and I think the will was executed on that date. That is the best of my recollection, sir.

Mr. LeSourd: That is all, your Honor.

The Court: Any redirect?

Redirect Examination

Q. (By Mr. Griffin): Mr. Kachlein, is the defense of Hans Forster in this case based on the cold facts as you understand them?

A. To the very best of my knowledge and belief, [5039] sir.

Mr. Griffin: That is all.

The Court: That is all, Mr. Kachlein.

The Witness: Thank you, sir.

(Witness excused.)

* * * * * [5040]

Mr. Griffin: Yes, your Honor.

At this time, the Government having rested and all the evidence being in, the Defendant Hans Forsters renews the motion heretofore made at the close of the Government's case for a verdict of acquittal, upon [5057] the grounds and for the reason at that time more specifically stated, and which grounds have now become evident by the evidence

adduced that only a judgment of acquittal can be entered in this case.

The Court: The motion will be denied.

Mr. LeSourd: If your Honor please, at this time, all of the evidence having been in, the Defendant Taylor renews his motion for a directed verdict of acquittal made at the close of the Government's case on the ground that the evidence—all of the evidence now having been in, the evidence remains insufficient to support a verdict of guilty against this defendant.

The Court: The motion will be denied.

Mr. LeSourd: Also, at this time, your Honor, the Defendant Taylor renews the motions for mistrial made during the course of the trial, and renews the motion for severance made prior to the trial.

The Court: The motions will be denied.

Mr. LeSourd: May the record on this be held open, your Honor? We may have some miscellaneous motions to make.

Mr. Cox: Motions to strike.

The Court: If you are going to get exhibits in, you are a little premature, but I will consider them as made without prejudice to the exhibits. [5058]

Mr. LeSourd: Yes. We may have some motions afterwards.

Mr. Moriarty: Your Honor is barring further testimony, though?

The Court: Apparently we will not have any further testimony unless there is some very cogent reason.

Mr. Keesling: At this time, the Defendant Erickson renews his motion for judgment of acquittal, and challenges the sufficiency of the evidence as to him, and as to all counts generally and as to each count separately for the reasons that we stated in our original motion at the close of the Government's case and at the close of the case put on by Mr. Taylor.

The Court: The motion will be denied. * * * * *

Mr. LeSourd: Distinguished Counsel, and Ladies and Gentlemen of the Jury:

This has indeed been a long and difficult case. On behalf of Mr. Taylor and on behalf of Mr. Cox and myself as his attorneys, we wish at the outset to thank you for your patience and your consideration throughout these many months. We realize it has been a real sacrifice to you, and we want you to know that we appreciate your consciousness and your sacrifice in carrying on your part in the process of our Government whereby we seek to give Justice to high and low, to the fortunate and unfortunate, alike.

Now, oftentimes, Ladies and Gentlemen, the process of arriving at Justice and of correct decisions is impeded by the very volume of the material and the testimony and exhibits that are offered before a Court and Jury in a case of this sort.

We feel that it may be that this is true in the case at bar. We have throughout this case [5229] attempted as best we could to limit the testimony and the material to those matters that were directly involved with the charges that the Government

brought. We have made a very large number of objections in this case, and I might say that it is not my practice usually to do that, but we have done so in order to attempt to keep the real issues of the case from getting buried under a fog, under the great, voluminous mass of immaterial matters, and we trust that you, as Jurors, will realize that in making all of those objections, that we were endevoring to do this and endeavoring actually to bring out to you what the real issues in the case are.

Now, what is the essential thing that you as Jurors are to find in this case?

Three defendants are here charged with income tax evasion. The evasion that is charged is on Mr. Forster's individual returns between 1945 and 1949, and on the corporation returns of the Issaquah Creamery from 1946 to 1949.

Your task is to decide as to each defendant separately and as to each year separately, and as to each tax-paying entity separately. Your task is to decide separately whether each one of these defendants, whether that person himself wilfully [5230] intended to evade tax, knowing that there were taxes legally due and owing, that there was income which was required to have been in that return and which was not in any item of that return.

Not that a person should have known, not that he might have known, not that he could have known, but that he knew when that return was filed that there was income which had to be reported which was not in any item of that return, and I believe,

as the Court will instruct you, it is wilful when it is done with bad faith and evil motive and your task, then, Ladies and Gentlemen of the Jury, is to determine whether as to each of these Defendants individually he acted with bad faith and evil motive, knowing that there was income not included in those returns that should have been included.

Then your task really is, Ladies and Gentlemen, to determine the state of mind. Now, in determining a state of mind, the first thing that we, as practical human beings do, is to look at the surrounding circumstances, to see what sort of a state of mind the conditions that exist, would naturally produce in a person under those same set of circumstances in the light of our ordinary human experience.

Now, we all realize, with the frailty of [5231] human nature, what it is, that people will at times attempt to better themselves financially by cheating others, by cheating the Government on their taxes or by other improper conduct, and when we find that such improper conduct has occurred, and that it has resulted exclusively in financial benefit to a particular person, we immediately know that that person may have a motive—he could have a state of mind—for committing these acts.

We also know from our experience that the ordinary person desires to lead a lawabiding life, and does not usually cheat or defraud others, or his Government when there is no real benefit to him from so doing, and so our experience would lead us to believe that where there is no benefit found to a person, it is not likely that that person will have

a state of mind, a motive, intentionally and wilfully to cheat and defraud the Government, or anyone else.

Now, when we get down to this case, and to consider particularly the defendant Taylor, as to whom it is my province in this case to speak, we start out then in the case not only with a presumption of innocence, which the Court will instruct you attaches to him throughout this case, but also with the fact that he had no incentive as found in the usual human [5232] experience to have knowingly and with an evil motive to participate in a tax evasion scheme to save Mr. Forster taxes. The evidence in the case has substantiated what I told you in my opening statement—that Mr. Taylor's total compensation, his total income, from all of Mr. Forster's enterprises, averaged approximately fifty dollars a month, taking them all, even those where Mr. Forster had a minority interest.

The total amount that Mr. Taylor received ran from about $3,000 in the early years of this Indictment to a maximum of five thousand dollars for the last year of the Indictment.

Now, I do not need to go over with you in detail the extensive services that Mr. Taylor performed for this. Mr. Griffin said something about one day a month for three of the companies. That is silly. Item after item, detail after detaail, on this stand, you learned that Mr. Taylor was practically on call for a myriad—a myriad of services, day to day, week to week, month to month, year to year, that had nothing whatsoever to do with the ordinary

month-end and year-end profit statements that he got out for these businesses.

Mr. Taylor performed a myriad of services, and, as I say, there is no need of my taking your time [5233] to go over them because you heard them.

Arctic Gardens he maintained what, for all practical purposes, was the offices of the company, doing practically all the details of running the day-to-day work of that business, a job that would ordinarily pay three or four or five hundred dollars a month. And what did he get? He got fifty dollars a month.

You will recall Mr.—the testimony of Mr. Tremper, I believe, that his time was charted at the rate of $150 a day, and Mr. Gorans' time was $60 a day. They are certified public accountants. Licensed public accountants don't get as high compensation as certified public accountants, but it is obvious that what Mr. Taylor received during this period was ordinary pay for the actual hours he put in working on this business, and all these businesses.

As Mr. Taylor testified, and Mr. Griffin referred to it in his argument, he testified that taking all of these businesses as a whole and averaging it out, on Arctic Gardens he was getting far less than the time he was putting in, and on certain ones like Apex, he was getting good pay for the time put in, but averaging it out, he felt that the compensation was low but it was adequate for what he was doing, but it [5234] would not justify, Ladies and Gentlemen, further extensive service. It would not justify audits and detailed verification that would take day after day of work, seventy thousand dollars for

audits that the defendant Forster says that he paid.

Now, where a man is receiving only ordinary pay for the actual hours he is working, there is certainly no incentive, financially at least, no motive shown, that would furnish any reason for Mr. Taylor knowingly and wilfully to participate in a large-scale tax evasion such as shown in this case.

You may be sure that if Mr. Taylor had received any financial remuneration above that, it would have been shown here. In fact, Mr. Forster's defense made a great thing of seventeen cents that Mr. Taylor had received, at one time, and another time they made a great to-do about $64.67 that he had received in closing out his Arctic Gardens account, and we showed you that right on the very book of the company that was credited to his $50 a month fee and there it was on the books when Mr. Gorans must have seen it when he tabulated the fees that Mr. Taylor received. Yet, they would try and have you believe that here was something that Mr. Taylor was taking for himself; and there was none of that, and if there [5235] was, you can be sure it would have been shown in this case.

Mr. Forster's position in this case was that Taylor could have paid himself anything that he wanted. Well, the evidence is to the contrary, but let's assume for a moment, that this were true; if any man were a knowing participant in such a large-scale tax evasion as shown here, particularly if he were the master mind, as Mr. Moriarty would like to tell you, if he were the designer and planner of that evasion, and if he could take whatever money he

wanted to out of it, he would take far more than mere minimum pay for the hours he actually worked in this business.

But, actually, Mr. Forster's contention is patently not true. Mr. Forster himself testified that no one made any salary raises in his business without getting his own personal consent.

He testified that he retained to himself the decision as to all substantial increases in expenditures. When he learned that Mr. Simonson had gotten $100 a month more, he immediately calls him and takes him to task.

Schneider testified that Forster swore when he found that Schneider had paid Taylor an extra [5236] $600 for a year in which Taylor had performed a large amount of extra services, because Mr. Baskett had passed away, and Taylor then started signing checks and it was necessary for him to go to Renton twice a week for him to sign checks of the business.

The swearing we don't believe actually happened, because it is obvious that no one connected with Forster, whether Mr. Taylor, Schneider or anyone else, would have dared receive any extra salary without clearing it in advance with Mr. Forster, and Mr. Schneider was the president and general manager and one-third stockholder of this company, and he was the one who signed the check to Mr. Taylor for that $600, and it is inferrable, I think, from the evidence, that he even checked that with Forster before it was ever paid to Mr. Taylor.

Forster admitted on cross-examination that he

even paid a bonus to Ribary in cash, one purpose being to avoid other employes learning of it and asking for it themselves. The reason Mr. Forster would like you to believe that Taylor could pay himself anything he wanted is that he wants you to think that he had an understanding with Taylor that Taylor should make complete audits of the books and pay himself whatever that might cost. If Mr. Taylor had thought [5237] that he could get additional compensation for additional services to Forster, if he had an understanding that he could pay himself whatever he liked, and was to make audits of the books, he certainly would not have continued to receive $50 a month from Issaquah Creamery without variation over a period from—and $50 a month from Alpine—$100 from the two of them without any change from 1935 to 1950 during which time these companies went from very small companies to large operations with a total of five or six million dollars a year sales and substantial profits.

Human nature just isn't that way, and certainly it is not believable that there is any understanding that Mr. Taylor could pay himself anything that he wanted, and he was to make complete checks and audits of these books, no matter how much it cost under these circumstances. Moreover, the facts in evidence negative any such conclusion.

Taylor testified that in 1940 when the businesses were split, he asked for additional compensation, and the outcome was, it was agreed that his com-

pensation would stay the same, and that Erickson would do more work.

Forster does not deny there was a conversation [5238] about fees at the time, and again in 1944 when Daisy Ice Cream was purchased by Forster, Taylor had been the accountant for Daisy Ice Cream, and was getting paid for handling the accounting for that operation.

After Forster acquired it, Taylor's compensation ceased. This fact is admitted.

Taylor testified that he asked Forster whether he should continue to act as accountant for the business, and Forster said, "No, Erickson will handle it out at Issaquah."

Mr. Forster denies this conversation, but the facts refute him. Taylor's compensation did cease, and Erickson from that time on did handle the accounting out at Issaquah, and made up the financial statements from year to year for this business.

Now, with regard to this matter of audit, Forster certainly knew that Taylor was not auditing the books or verifying the details.

Back in 1932 there was an audit. Mr. Taylor was asked by Mr. Peters and Mr. Forster to make a special audit, and he did so, and it is here in evidence. Mr. Griffin has referred to it. It was an audit. It had a detailed letter of verification, signed by Mr. Taylor, showing what work he had done and what assets he had verified, and verified that [5239] subject to those conditions that the statement was correct. There is not one single other such verified statement in this entire record. Only that time was

Taylor ever asked to make an audit, or verify the details of the business. Forster received that audit. He knows what an audit is. He knew year after year in that time that he was getting no audit or certification, or verification, of any kind, but merely a list of assets and liabilities made up from the information given Mr. Taylor without verification.

Now, perhaps Mr. Forster had another purpose besides that of saving money in not having his Issaquah books audited in the year in question, by Mr. Taylor or anyone else; he had kept control at Issaquah of the disbursements of Alpine Dairy as well as of Issaquah Creamery, and Mr. Forster had also arranged that there should come into Issaquah a large number of receipts from these various businesses that he had an interest in that were scattered over Western Washington, including Apex and Finstad and Utgard, and these other businesses.

Mr. Griffin stated that Mr. Taylor arranged that, that Taylor had these Apex checks sent in to Issaquah, but you will recall Mr. Erickson's own testimony [5240] on the stand that when he was claiming that the reason he had no place in the books for the Apex checks was that they didn't really belong to Issaquah but to Alpine, and he was asked why didn't call Mr. Keck and ask him to change them.

What did Mr. Erickson say?

Forster arranged for the checks to come in here and it was Hans's business. Why should I interfere? Certainly Forster arranged it. He was conducting the details of the business, and he had all the

checks of Alpine, or whoever they belonged to, coming in to Issaquah.

Now, it is significant, Ladies and Gentlemen, in this case, that all of this diversion of income which the Government claims here and which is the real basis of this case, all occurred out at Issaquah.

The Government is not here complaining of any matter arising out of the Seattle office of Alpine Dairy. In the fog that has been attempted to be created, Mr. Griffin goes over a lot of accounting adjustments which Mr. Gorans says were made in the ledger arising out of the Seattle office of Alpine Dairy. Mr. Gorans admitted that the adjustments may be correct. He didn't know that there was anything [5241] improper about them. He just couldn't explain them.

The interesting fact is that the Government isn't here complaining about them. The Government is here complaining about the diversion of business receipts and where did it occur—at Issaquah.

It was at Issaquah where Mr. Forster was present day after day, where Mr. Erickson was present day after day under Mr. Forster's thumb. It was at Issaquah, where they could be handled, and isn't it inferrable, Ladies and Gentlemen, that the reason the checks were all coming into Issaquah was so that they could be handled by Mr. Forster and by Mr. Erickson under his direction in the manner he wanted them to be handled?

Now, in appraising the evidence in this case, and the credibility of the witnesses, it is important that you remember at all times the actual physical situa-

tion that existed in this case. You should keep in mind that Forster was running these businesses full time. He says seven days a week. And Mr. Erickson was working in these businesses, he says, full time. He says six days a week. Forster is there at Issaquah every day. At least, part of the day,—and two days a week he is there the full day according to the testimony. He is in his office next to Erickson with a glass partition in between, and [5242] buzzing Erickson to come in with his buzzer, and exercises general control over the whole business. Day after day, week after week, month after month, Forster and Erickson are handling these checks, and cash as they come in to Issaquah. They are there day after day, computing the accounts payable, paying the bills, taking the inventory, collecting the receipts, billing the customers.

Taylor, on the other hand, is down in Seattle. He has a large accounting practice, 20 to 30 retainer clients to keep him busy, and he is working long hours, doing work for those clients, and doing all sorts of errands for Mr. Forster, handling practically an employment agency for the bookkeeping staff of Alpine Dairy, handling a myriad of items, acting as a buffer for agents and insurance men and others that Forster wanted to get rid of. And, he is in Seattle and he is out at Issaquah how often? One day a month.

It was testified to he might have dropped in at other times during the month on his way to his summer cabin at Lake MacDonald. A social call. But, when was he there on business and working

on the books? One day a month. He was going out to Puyallup one day a month, and going 'way up to Mt. Vernon and Conway one day a month, and going to Renton Ice, a good part of this period, several [5243] days a week to sign checks, and going to Hub City Drug one day a month, and he was a busy man.

Now, when he went out to Issaquah that one day a month, what does he do? He has already received from Mrs. Wilcox her figures. He goes out there and Mr. Erickson has these journals posted, and has all the expense items broken down on a large adding machine tapes, separate both for Alpine and Issaquah.

You have seen the tapes that were supplied.

Mr. Taylor makes out these big complicated work sheets that you have seen so many of in this case, one for each business, and then he enters the figures in a ledger, and takes off a trial balance and works up a profit and loss statement and he goes over this statement with Mr. Forster and Mr. Erickson.

Now, Forster and Erickson obviously knew what Mr. Taylor was doing. They knew he was taking these totals he was giving them, and they knew he was making no audit or verification of these books whatsoever, and they knew that all he could do under ordinary, minimum compensation for what they were paying him was that he was doing along with all these other jobs that he was handling for Mr. Forster.

Now, Ladies and Gentlemen, when you consider this physical situation, undisputed in this case,

and [5244] keep that in mind, I say to you that it is obvious the extent that Mr. Forster has gone here in his attempt to throw the blame for this matter on Mr. Taylor.

Forster would have you believe that Taylor actually was running all these businesses and making all the decisions. Taylor, he says, made the business, as well as the accounting decisions, and all the financial decisions. He decided what businesses Forster should buy, and what he shouldn't buy.

He decided whether Forster should buy butter or whether he shouldn't buy butter, or whether he should sell it. He decided whether Forster should accept the directorship of the bank or whether he shouldn't. He decided how much money Forster should borrow, and decided the bank account on which Forster should draw his checks, individually, check by check, apparently. Forster says Taylor had and did have the power to cut his own salary—cut Forster's own salary, and he says Taylor actually ran the Renton Ice and Ice Cream Company.

I think those were just about his own words, despite the fact Taylor had no financial or stock interest in the company, Taylor was running the whole thing. In other words, Taylor coming out to [5245] Issaquah one day a month is pictured by Forster as the directing genius of this operation, and Forster working seven days a week, apparently taking orders from Taylor, and when Mr. Griffin stands before you this morning and says Mr. Taylor was incompetent and didn't know what he was doing, which story shall we believe?

Maybe neither story is correct.

Certainly, if Mr. Taylor was a genius and could make all the business decisions that brought about an empire that started with nothing, and ended up with millions, he was certainly getting underpaid at fifty dollars a month for each of these companies.

These statements, Ladies and Gentlemen, by Mr. Forster would be amusing, if it wasn't for the seriousness of this case. They simply illustrate the length to which Mr. Forster feels he must go to make Mr. Taylor the scapegoat for this tax evasion.

Mr. Forster offered no explanation except that Mr. Taylor knew about it, and should have reported it. Most of his defense didn't go to the items charged here by the Government. He went into a myriad of bookkeeping matters, which have nothing to do with the case, and his accountants couldn't explain, because here was an adjustment that couldn't be explained anywhere, and then there was something wrong about it. They [5246] went over twenty years on cross-examination with Mr. Taylor, with year after year, after year, bringing out year-end statements, and expecting Mr. Taylor to remember whether this figure, why this figure was different from this figure twenty years ago.

Frankly, I was impressed, myself, at Mr. Taylor's recollection, at the recollection he did have, and at the logical explanation he did have for those adjustments, but they have nothing to do with this case, Ladies and Gentlemen of the Jury. They are not what the Government is here charging as tax

evasion. They are merely an attempt to befog this case and snow it under with a myriad of details in an attempt to discredit Mr. Taylor, so that you will lose sight of Mr. Forster, the matters you are here actually to determine.

We say to you, Ladies and Gentlemen, that on a detailed consideration of this case, you will find that there is no evidence here sufficient to establish the guilt of Mr. Taylor, sufficient to establish that he knowingly and wilfully and intentionally evaded Mr. Forster's tax except the oral testimony of Forster himself, and, to some extent, Erickson himself on the stand, in this case, and we say to you that unless you can believe, beyond [5247] a reasonable doubt, that that testimony of Forster and Erickson is true, there is no basis in this case for convicting Mr. Taylor.

And, we submit to you, and I wish to discuss with you, during this presentation, that in the light of the contradictions in Mr. Forster's testimony, itself, and in Mr. Erickson's testimony, and in the light of the background and all of the circumstances of the case, the oral testimony of Mr. Forster and Erickson blaming Taylor, cannot be believed beyond any reasonable doubt, or at all.

Now, let's examine the actual issues of tax evasion raised by the Government as they relate to Mr. Taylor.

The primary charge, and it is apparently admitted by all counsel that this is a primary charge, the primary charge is that business receipts on a large scale coming into Issaquah, both by check

and by cash, were not recorded on the business books, and were put into Mr. Forster's savings account 198.

Now, there is no doubt on the evidence how this came about, how it was done. In most instances, the checks or the cash were received by Erickson, but at times, by Miss Neukirchen, and in any event, they [5248] were placed on Mr. Forster's desk without being entered in the books.

Mr. Forster or Mr. Erickson took them over to the Washington State Bank, and deposited them in Account 198. Now, Miss Neukirchen testified that Forster directed her to do this. She told you that Forster himself told her not to record those receipts on the books, and to put them on his desk, along with the invoices, and Mr. Forster testified that after he had accumulated those invoices, he destroyed them from time to time.

Erickson, however, refused through his testimony, to say that Forster had directed him to put these receipts on his desk, and he refused to say that Forster had told him not to enter them on the books. But Mr. Erickson had no other explanation for his actions than to say that this was the easiest way of disposing of them, a very lame explanation, if I ever heard one.

Now, Erickson knew that these receipts were going into Account 198, without any record being made of them, which could be used to report them for tax purposes. Erickson himself made out many of the deposit slips, and on those deposit slips, he himself each time having simply jotted down the

amounts, without [5249] any description of the source of the check which could be used to report them for tax purposes.

In fact, Forster testified, as I recollect, that he didn't even keep the savings deposit slips by which this money went into the bank, so that no record whatsoever was kept from which this income could be reported for tax purposes, and both Erickson and Forster knew it, and were doing it.

Now, what reason did Erickson have for his doing such a thing? As we will discuss later, Erickson had no reason to do this, unless he was directed to do it by Forster, and it is obvious that on the stand, he is attempting to cover up for Forster in this regard.

Now, other receipts, such as the Time Oil rebates, and the Farm Rental, came in currency directly to Mr. Forster, and handpaid to Mr. Forster, and what did he do with that? They also went into account 198, without any record being made of it whatsoever which could be used to report them for tax purposes. Erickson knew about these two, or at least, about the Time Oil, because from time to time, he checked the gallonage of Time Oil, and at least two times, I think the testimony is, to [5250] see that Forster was getting the right amount. He even made deposit slips, including some of the currency from Time Oil, so that he knew, too, that no record was being made of these amounts from which they could have been reported for tax purposes; and Mr. Forster told you that he knew that the taxable income of Issaquah Creamery was be-

ing reduced by the total original charge of the Time Oil Company for their gasoline, and he told you that he knew that this expense should have been reduced by the amount of rebates he was getting, and when he admitted that he did not give Erickson these figures, month to month, as he received the money, so that Erickson could put them on the books as a reduction of the gasoline expense, and that Mr. Taylor knew, it seems to me he even testified that he knew, that the figures on which Issaquah Creamery was paying tax were the income figures which included the full deduction of the original charge by the Time Oil Company for the gasoline.

Now, this failure to record business receipts is the very essence of this case.

We have in evidence a stipulation, Exhibit 238. That stipulation lists 283 checks which were diverted in this manner. The Government says that there [5251] were more, but here are 283 checks and it includes checks from a great variety of sources, and representing a great variety of receipts. It includes milk pool payment checks, and checks from the Borden Company for payment of casein, checks from Consolidated Products, and checks for the sale of plastic cream, and checks from the Kittitas Novelty Association representing sale of calendars, and checks from Stephenson, representing sales of butter, checks from the Daisy Dairy representing rent, and checks from Jones and Bronson, the law firm, representing collections on bad debts, checks from Puget Sound Catering

Company, and others representing miscellaneous sales, freight refund checks from the Northern Pacific, and checks from the Western Condensing Company for the sale of whey, and checks from various companies representing sale of syrup, and checks for sale of beer bottles and checks coming in on the sale of building materials, and gasoline, and checks coming in for sale of powdered milk, and rebates from the pool companies, and on loans and all other receipts. It is obvious, when you consider, Ladies and Gentlemen, the tremendous variety of checks diverted and not recorded on the books and put in account 198 that Erickson knew where to record them, and he knew where to put them on the books, and that Forster also knew that this [5252] income was not being recorded on the books, although he contradicted himself, back and forth, extensively on this matter, as I will outline to you when we commence again after lunch.

The Court: Ladies and Gentlemen of the Jury: We will now take the noon-day recess. The Court calls your attention to the admonition given you on similar occasions, and cautions you you are not to reach any conclusion until this case is finally submitted to you after all the argument and the instructions of the Court.

You may now be excused until 1:45.

(Whereupon, the Jury retired from the courtroom.)

(Whereupon, at 12:16 o'clock p.m. a recess was had in the within-entitled and numbered cause until 1:46 o'clock p.m. May 11, 1954, at

which time, counsel and defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and [5253] all defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Ladies and Gentlemen of the Jury:

My partner tells me that just before we recessed, I used Mr. Taylor's name when I meant Mr. Erickson. It will probably happen again many times when we are speaking of all these people, but I am sure the context of what I say will make clear to you what I mean in that respect.

When we adjourned, we were speaking of these diverted business receipts, and of the fact that Mr. Forster knew that they were not being entered in the books.

He, in his testimony, contradicted himself on this point from one statement to the next, but he told you in the course of that testimony that Erickson had told him that he had no place to run the receipts through the books, and, furthermore, Mr. Forster's sworn statement to the Agents throughout the trial was read to you where he specifically

stated that he knew they were not running the cash through the cash sales.

So, we have this diversion of the checks [5254] occurring at Issaquah, going into Account 198, not being entered on the books, and no record being made of all those items from which any book entry could be made, or from which a tax return could be filed.

Now, where is Taylor involved in all of this? Admittedly, Taylor was not present day after day when these checks and receipts were coming in and being put in Forster's desk. Taylor was not receiving or handling the checks nor was he putting them in the bank account, and when he came out at the end of the month, he was given figures from Erickson's books, and there was nothing in these figures that would indicate in any way that these business receipts were omitted and never recorded on the books. Even if he had audited these books right down to the very last invoice, he never would have found out that these receipts were not being put in the bank account and recorded on the books.

Mr. Erickson told you that in most of the cases he made no billings out for these items which were diverted, and Miss Neukirchen told you that where invoices were made out, they were put on Mr. Forster's desk, and he told you that he destroyed them.

No better system could be devised for [5255] accomplishing a large-scale diversion of income and preventing your outside accountant from learning of it, no matter how far he went in verifying the details or auditing the books.

So, apart from the oral testimony of Mr. Forster, there is nothing in the evidence in this case that indicates that Taylor knew a single thing about this large-scale diversion of income.

Now, Forster's assertion is that he told Taylor about this omission of income, and that Taylor should have reported the income going into Account 198. When Forster was asked what figure he gave Taylor, he first admitted that he didn't keep track of the items that went into 198, but later, he claimed that he told Taylor what the amounts were.

Later, again, he revised his position again and said as to these checks that he didn't give Taylor figures on them, and that he thought that they were on the books. Still later, when he was confronted with his statement that Erickson had told him that there was no place to put them on the books, he again reversed his position and said that he had mentioned them to Taylor, and Taylor knew they were going into 198.

He admitted then, however, that he didn't [5256] keep track of the figures, and he had no explanation of how he could give figures to Taylor, when no record was made any place of those figures.

You will remember then that on Mr. Griffin's redirect examination, Mr. Forster was shown check after check coming in to Issaquah from other companies in which Forster had an interest, and he was asked whether it ever occurred to him to tell Taylor about these checks, and he said "No," it did not ever occur to him to tell Taylor about them.

On my recross-examination, I asked him if that

were true, how he thought Taylor knew about them. "Well," he said, "Taylor knew about them because I told him." And I said, "If it never occurred to you to tell him about those checks, how did it happen you told him?" And he sat there, and had no answer and he couldn't answer that question.

Now, with respect to the Time Oil rebates, the situation is the same. Forster admitted that he didn't designate on his deposit slips the source of the cash. It went in as currency on this one item. No way of telling what went in from Time Oil. And, he further admitted he kept no other record of Time Oil.

Yet, he made all sorts of contradictory statements about telling Taylor about this item. First, [5257] he told you that he told Taylor when he originally made this deal with Time Oil, and that later on, it was two cents a gallon and he told Taylor about that, and when we asked him how Taylor was to get or did get the amounts, which he thinks should have been put on his tax return, he said, "Taylor could have received that information either from me or the Time Oil Company."

And then later he told you he gave Taylor this information at the end of the year, and that he gave him an approximate amount that had been received from Time Oil Company.

We asked him how he got that approximate amount when he didn't keep any records, and when he was questioned about this, he said it was an approximate amount, and when Taylor asked him about the interest and donations and other items

at the end of the year,—then I read Mr. Forster's sworn statement to the Agents, in which he stated that he never mentioned to Taylor the amount of the Time Oil Rebates, because he didn't know the total amounts for the year. Mr. Forster admitted making this statement, and what does he do? He again reverses his statement and says he didn't go over the thing at the end of the year, as previously said, but that he told [5258] Taylor the amount he was getting monthly.

That was on redirect.

Then, again, on my recross examination, he said, well, he didn't give Taylor a figure every month; he simply told Taylor the approximate amount that it was every month, and there we have him back and forth in contradictory positions, and all the time, it is evident from the physical exhibits that he never kept a record, so that he knew what he got to tell Taylor to put in his returns.

Mr. Taylor tells you he had heard they were doing business with Time Oil and they were getting a rebate, but he assumes, like with the rebate from other companies before, that it was being properly handled and recorded in the books out at Issaquah.

It is obvious that Forster on this is not telling the truth. He even tells you both sides of the story and contradicts himself.

He received this large amount of income knowing it was not being recorded any place, and not going in his returns, and he wasn't keeping a record or giving Taylor or Erickson or anyone else the infor-

mation on which it could have been put in his return.

Now, apparently realizing that, realizing that his testimony was unbelievable on that score, [5259] Mr. Taylor fell back on the argument——

Mr. Cox: (Interposing) Forster.

Mr. LeSourd: (Continuing) Excuse me. Mr. Forster fell back on the argument of saying that Taylor should have returned this income for him because Taylor had heard mentioned the balance in account 198.

Now, Forster went to great lengths in this case to try to establish that Taylor had heard or knew the balance in Account 198. Why he did so, I certainly never will know, because Mr. Taylor took the stand and said certainly, he knew that Mr. Forster had a savings account at Issaquah, and it was entirely possible that the balance in that account was mentioned in his presence from time to time, or at times, but nevertheless, Mr. Forster's defense puts on Mr. Strack and Mr. Donaldson twice, and they put on Beadon Hall and they introduced A-61, this little personal list of assets that Mr. Forster says he found in his bureau drawer,—he never found another, but he found that in his bureau drawer—all of which amounted to what? To show that Taylor knew the balance in 198. What if he did know it? What is there in the balance, and assume he did know it, what is there in the balance of [5260] account 198 that would ever show to Mr. Taylor, or anybody else, that there was all these business receipts coming in to Issaquah day after

day, and not being recorded on the books, and being diverted into this account?

The balance, if you will look at the bank statement, in evidence here, practically didn't vary all through this period. At the end of every year, it was just about the same. In fact, in 1949, there was a sharp drop from 1948 in the balance in that account.

How could anyone, even if he took the balance at the end of each year and compared them, have known there was $25,000 or $50,000, or whatever it was, a year going into that account from diverted business receipts and then being drawn out for other purposes? There was nothing in that account that would enable Mr. Taylor to make any returns of that income or enable him to know that there was that income being diverted into that account and not recorded on the books of Issaquah Creamery Company.

Now, furthermore, it is the fact that Mr. Forster had a large balance in this account, and had personal assets. That certainly wasn't anything surprising, or that should cause suspicion. Forster had [5261] been drawing $24,000 a year since the early '30s and while in some of the tough years, he couldn't draw it at one time, he got it later, and he got it without taxes in effect because the company was paying his tax, and Mr. Erickson testified that the taxes paid, which were charged to his, perfectly properly to his, proprietorship account in Alpine Dairy and taxes paid in 1945 to

1949 amounted to far more than $100,000 which were paid for him.

Moreover, in this proprietorship account of Alpine Dairy, he had a drawing account, and the evidence shows he drew large amounts from that account in the various years. He was drawing large amounts to pay for these investments he was making from that account. All that is proper in a wholly owned business of that sort, but the money is credited to the proprietorship account to pay taxes on it, and that is your ownership of the business on which the tax is paid. He can withdraw it at any time he wants to, and it is clear in the evidence that he did make substantial withdrawals. So, what is there in $100,000 deposit in the bank account that would make Taylor think that there were these large amounts of income from diverted receipts which were not being reported? There, as I say, is the most [5262] important part of this case —the diversion of these business receipts at Issaquah.

And the next most important part of this case, Ladies and Gentlemen, is the charging off of personal expenses to business expense on a very large scale.

Here, again, we say to you that there is no credible evidence that Taylor knew about this, or was in any way involved in this thing except the oral testimony of Mr. Forster, and even—on this point even, there is no such evidence.

Now, the figures from these books, as I have said before, were given to Mr. Taylor at the end of the

month by Mr. Erickson. You saw the adding machine tape and expense items were broken down in these long tapes, and they were listed by name and number, plant expense so much, supplies so much, and advertising so much, and so on, down the line, through all the expenses of this large business.

We find now that buried in those sums were large amounts of personal expenses of Mr. Forster which had been paid by Mr. Erickson and had been charged off to these various accounts, but there was nothing in what Mr. Taylor got that would indicate that there was anything in the journals of Mr. Erickson, [5263] even if Mr. Taylor had gone into every item in the journal, that would have shown you—shown him, excuse me—that would have shown there was these personal items charged to business expense.

As Mr. Eppler told you, in a business of this magnitude, a check may have been written to almost any payee and have been a perfectly legitimate business transaction, and all that Erickson had in those journals was the name of the payee and the amount, and, suppose Mr. Taylor had been auditing the books and had even gone down to the check stubs, he still would have learned nothing more.

In fact, Mr. Griffin introduced in evidence—I think it was A-134,—the check stub of the Puget Sound Products, Incorporated. What does it show? It just says Puget Sound Products and the amount, and the date. That is all. Even if Taylor had gone to the check stub, he wouldn't have known that these personal expenses were charged to business

expenses. Who would know? Mr. Forster knew, and Mr. Erickson knew. The only way Taylor could have found out, was to take each one of the checks and to quiz Forster and Erickson about them. But, they knew about them. It was their responsibility to put those in the books properly in the first place. [5264]

Now, how do they in any way attempt to blame Taylor on this transaction? They didn't say they told Taylor about this. They couldn't very well, because these checks were all of a different nature, day to day, and coming in and charged to different accounts, and Taylor wasn't there, and it would have looked ridiculous, so, what did they do? They put two accountants on the stand, Mr. Alkire and Mr. Gorans, and they testified that it was the responsibility of an accountant keeping a general ledger—he was responsible for the accuracy of every single figure that goes in that ledger, no matter what he is paid, nor what he is hired to do, no matter whether he has the power, right down to the very last invoice, detailed check, or oral examination.

Now, Mr. Alkire and Mr. Gorans are respected members of the accounting profession in this City. It is obvious, however, they are a part of the same firm, and it is obvious that their partisanship lets them take the stand and testify without adequately investigating the particulars before they took the stand. They both admitted on cross-examination that they themselves do not do this type of work. They do not keep general [5265] ledgers, and they

admitted that they did not inquire of the accountants in the City, and it is a very large practice, that do keep ledgers as to what the responsibility of such accountant is, and they further admitted that they didn't check the Treasury Department's ruling on the subject.

We put on the stand Mr. DeFriel, a certified public accountant, with many years' experience in doing this work. He never met Mr. Taylor until the day he walked in to testify, and he told you that this type of employment is very common in the City among the smaller accounting offices because many, if not most, small business enterprises do not want to go to the expense of hiring accountants to make a thorough audit of their books at the end of the year. They are willing to rely on their own bookkeeping staffs for the accuracy of the figures, but they would like to have an outside accountant keep the general ledger, and make the tax returns, so as to get the benefit of his knowledge as to deductions, depreciation rates, and other technical things of that sort.

Mr. DeFriel told you he was familiar with the custom and the practice and the responsibility. He was familiar with the Treasury rules on the [5266] subject, and he said emphatically to you that an accountant keeping a general ledger is not responsible for the accuracy of the figures given him. He has no duty to verify them. He has the right to rely on the fact that they are accurate when they are given to him.

Now, we point out to you that under the instruc-

tions which we believe the Court will give you in this case, Mr. Taylor is responsible here only for actual knowledge. He is not responsible for what he did not know, even if he should have known, but, nevertheless, we say to you, that it is clear that an accountant, a public accountant, handling a general ledger, and taking figures given to him by his client, has no duty of making an audit or of verifying those figures in any way.

But, as I said here, even if he had tried to verify this, he would have found nothing.

The fault here, Ladies and Gentlemen, in this case, lies not in the keeping of the general ledger, as Mr. Griffin would have you believe. It lies in the fact that out at Issaquah they didn't enter basic material in the books, and the cash in the diverted receipts, and they put them in the books improperly in the case of personal expenses so that no accountant handling the general ledger, no [5267] matter how the general ledger was handled, even if every posting reference was there, and every "i" dotted, it wouldn't have made a bit of difference in this case, because there is where the income was omitted, on which the tax was not paid.

Now, the same equivocalness and contradiction in testimony that characterized the position of Forster and Erickson on these first two matters, also characterized the 1949 year-end adjustments at Issaquah Creamery Company.

Erickson made four changes in his books. He duplicated the Stephenson invoice. He—that was about eighteen thousand. He duplicated the Con-

solidated invoice. That was about eighteen thousand.

And, increased the milk drafts five thousand in November, and five thousand in December.

Now, the effect of these four changes was to increase accounts payable by eighty thousand dollars.

The question is, how did this come about and who was responsible for it?

Mr. Forster, by his own admission raised the deuce about the profit of Issaquah Creamery Company, at the end of the year 1949. He told Taylor it was 'way out of line, and impossible. Taylor says [5268] he even threatened to get another accountant.

Erickson admits that he was in on part of this conference, and Taylor says he was there most of the time.

Certain facts are in agreement. It is agreed that the conference was held. It is agreed that Forster objected violently to the profit. It is agreed that Taylor came back later, and that meanwhile Erickson had made some changes in his books, and that he gave corrections to Taylor, and that Taylor made the corrections on his work sheet, which is here in evidence, and they went on the tax return. And, it is agreed that Forster came in and signed that tax return before it was filed.

Now, the other facts, however, are in dispute. Erickson testified that following this meeting with Forster and Taylor, that Taylor came out and told him to make the changes in his accounts payable, and that he did so. Taylor, on the contrary, tells

you that when Forster raised this fuss about this high profit, Taylor told him, "Well, this is what the books show. I am satisfied that my computations from the book figures are correct, and this is it. If you are so sure that there are mistakes, supposing you go ahead and try and find the mistakes, and if you find mistakes, I will keep my ledger [5269] open so that I can make the changes if you find those mistakes."

And, Taylor says that he waited until the first part of March, and no word was coming, and he 'phoned Mr. Forster and was told to 'phone Mr. Erickson, and was told "There are changes."

And he goes out to Issaquah, and was given changes, and he puts them on the tax return, and he tells you that Forster came in to sign the return, and he went over the changes with Mr. Forster and he told Mr. Forster he was getting them from Mr. Erickson and it was up to Forster and Erickson to substantiate them.

Now, who is telling the truth?

Mr. Forster's, and Mr. Erickson's, testimony on this score, like the testimony on the other is, we submit to you, contradictory and unbelievable. Erickson, in a sworn statement to the Revenue Agents that was read during his cross-examination, stated that Taylor came out of this meeting at the end of January, 1950, and told Erickson to increase his accounts payable eighty thousand dollars, and Erickson in that sworn statement went on and said that in February, 1950, following this conversation, he did so, and that he increased his accounts pay-

able by [5270] eighty thousand dollars, and that he did so, he went on in that sworn statement, by duplicating the Stephenson invoice, by duplicating the Consolidated invoice, and by increasing the milk drafts ten thousand dollars—total eighty thousand dollars.

Early in the trial, however, Mr. Eppler was on the stand and testifying to the statements that were made to him before the trial, and during Mr. Eppler's examination, we showed you that Erickson's statement was not true, because the Stephenson invoice, which he swore to the Agents he had changed in February, 1950, had not only been duplicated prior to January 15, 1950, and had been cleared off the books January 15, 1950, by a phoney check written to Stephenson, but deposited in the Issaquah Creamery Company bank account.

What happened in the light of that testimony?

Mr. Erickson took the stand at the close of the case and shifted his story entirely. Now, he testifies that Mr. Taylor came out of that meeting and told him to raise his accounts payable sixty thousand dollars, and not eighty thousand dollars and he further says that back in December of 1949, that Taylor [5271] told him to increase accounts payable twenty thousand, something he never told the Agents whatsoever, and that he duplicated the Stephenson invoice at the end of December, 1949, because Taylor had told him to increase the accounts payable twenty thousand dollars.

Now, Erickson likewise, between the time he testified to the Agents and the time he testified here

on th stand, had worked up an expanded set of reasons for these changes, as Mr. Cox read to you during his cross-examination of Erickson, Erickson in his sworn statement had said that he had reduced the inventory at the beginning of 1949 by $29,000.

Now, no other reduction of inventory was mentioned by him to the Agents. On the stand here, however, he talks about a fifty thousand dollar reduction of inventory in 1949 as the basis for the year-end 1949 adjustment. Not twenty-nine thousand. Now it is fifty thousand.

Now, this change in testimony, we submit, was probably made in order to tie in with a fifty thousand dollar figure that Taylor had temporarily used in March and April, 1949, to indicate that there might be something wrong with the books in that regard. The purpose is, clearly, to make it appear [5272] that there was some substantiation to Erickson's claim that he was instructed by Taylor to make these adjustments.

However, even on this, Erickson's testimony is full of contradictions. While he at one time claimed that he reduced the 1948 inventory $25,000 at the end of 1948 and again later in his testimony he said he did not reduce it at the end of 1948 by $25,000.

What is the fact as to that?

He was asked what the true inventory was at the end of 1948 and he said it was close to $100,000. Now, the physical exhibits, his own inventory slip, which is in evidence in this case, shows an inventory of eighty-three thousand dollars. So, it is ob-

vious on his own testimony that there was not a $25,000 reduction of inventory, and it is apparent that the only reduction of inventory at the end of 1948 was the $10,000 which Mr. Taylor took out of merchandise inventory and put in the building material inventory, as he told you on the stand, and which is shown on his work sheet, which, of course, had no effect on taxes whatsoever.

Now, if reduction of inventory were made by Erickson monthly during the intervening months of [5273] the year that would have no bearing on taxes.

Most businesses, as a matter of fact, Ladies and Gentlemen, do not take actual detailed inventories month by month in their business. They make estimates of their inventory all during the year. The time the inventory is important for tax purposes is the closing inventory of the year, and so it would make no difference in this case what the inventory was estimated to be, or how the estimate was arrived at during the year.

It is only that year-end inventory that has any tax significance. The $50,000 offset that Mr. Taylor used in March and April, 1949, to flag something would make no difference at all in this case, because, as I say, the matter of inventory on monthly statements is immaterial for tax purposes and those estimates are made by the management in any way that they see fit.

Now, Erickson, however, said that in certain months in 1949, he reduced the inventory fifty thou-

sand dollars, and he further said that he did this on Taylor's instructions.

Now, on Mr. Maxwell's cross-examination, he said that in February, 1949, he reduced the inventory for January 31, 1949, by fifty thousand dollars, and that [5274] he made a similar reduction each month thereafter in the figure that he gave to Taylor down to and including December 31, 1949.

Now, that was his last testimony on the subject. Previously, he testified that he gave Taylor the actual inventory in March and April, 1949.

Which of the two statements is true?

Not only is there inconsistency on his testimony of the inventory figure during 1949, but further inconsistency in his testimony on the ending inventory that he gave to Taylor at the end of 1949. That is, the inventory he gave to Taylor on the last of January, 1950, when Mr. Taylor came out to Issaquah.

Erickson's final testimony on this matter under recross examination by Mr. Maxwell was that this inventory figure that he gave to Taylor was fifty thousand dollars less than it should have been, but prior thereto, he had attempted to justify his duplication of the Stephenson invoice, which obviously occurred before January 15, 1950, by stating that his purpose in duplicating it was to increase the year-end inventory, and that he did increase the year-end inventory by twenty thousand dollars to offset this Stephenson invoice. If he had done this, then the inventory given to Taylor at the end of 1950 under his [5275] own testimony that he was

consistently dropping this fifty thousand dollars, would have been only thirty thousand dollars reduced, not fifty. In one point, he says that, and at one point, he says it was fifty thousand reduced.

Now, Erickson's entire testimony on this subject is exceedingly vague and contradictory. He said that he didn't like making these changes, and that it was something he had never done before.

If so, it must have stuck clearly in his mind and why did he not remember all of those details when he gave his testimony on this subject to the Revenue Agents a year or so or more before this trial?

Now, sometimes when one is confronted with a very difficult set of facts, it is very illuminating to step back a few paces and to try to get a general prospective of the whole thing.

Let's do that here. Let's see if we can see these facts in their proper setting in this case.

Now, looking at this whole picture, we see in the first place that it was Forster who was raising the fuss about the income. No one else had any reason to care whether the income was high or low, large or small. Forster, however, had to pay tax on that income, and he was the one who was squawking about it. [5276]

The next thing, when we look at this whole set of facts in perspective, is that the amount of inventory was peculiarly within Forster's and Erickson's knowledge. They were the ones that were taking the inventory. The inventory was taken by Forster through his plant manager, and Erickson said he was pricing the inventory.

Taylor was not there when the inventory was taken.

Now, Erickson tried to tell you that Mr. Forster never even looked at the inventory in this case. It is inconceivable to anyone who has had any business experience that the owner of the business would pay no attention whatsoever to his inventory. As, I think Mr. Moriarty said to you, how would he know what he had to sell? Mr. Taylor, nor Erickson, had incentive or reason to tamper with the accounts payable or the inventories of this business.

Their jobs were to keep the books and make out the tax returns, and no reason appears why they on their own, or either of them on his own, should have made improper charges in these figures. Forster was the only one to whom this was important, and he was the one who was squawking. I say to you, if orders came from anyone to Erickson to make [5277] these changes, it would certainly appear probable that they came from Forster.

Mr. Erickson made these changes at the end of 1949 in his own books and in his own writing. Consequently, he has to offer some explanation to you for it. Either he is completely responsible for it, or he must say that someone ordered him to do it.

In his testimony, he is obviously covering up for Forster. You watched him on the stand. You heard his testimony about putting these checks on Mr. Forster's desk without ever saying a word about it—mum, is the word—he puts them on his desk, and Forster hands them back, and he writes out a deposit slip and he never says a word. He is obvi-

ously covering up for Forster. He borrowed money from Forster. He is dependent upon Forster for his livelihood, and he took the stand and testified under that basis. He can't say that Forster made the—he can blame it on Taylor.

What is more natural than Erickson taking the stand and saying, "Taylor told me to do it. Taylor told me to do it."

But, Erickson's testimony is simply unbelievable upon that score. He says, "I didn't like to do this." Never done it before, but Taylor told [5278] him to, so he had to do it.

And, he says, he never bothered to tell Forster about it, never bothered to tell him he was doing it. He never bothered to ask Forster whether he should do it, and he even put that phoney Stephenson check in front of Forster, and had Forster sign it, and never uttered a word that he was making changes to save Forster fifty thousand dollars in taxable income.

Now, is it conceivable to you, Ladies and Gentlemen, that Mr. Erickson, working there at Issaquah, day in and day out, under Mr. Forster, under his thumb, being buzzed in and out of his office, being paid by him, dependent upon him for his livelihood, would have made changes that he thought were improper and he didn't like to do in these books?—The changes being for the benefit of only one person, Mr. Forster, without even asking Mr. Forster whether he had to do it? Is that conceivable to you?

Neither Mr. Erickson nor Mr. Taylor had any

reason to do anything except on orders from Mr. Forster, and Mr. Erickson is the one who did it, and he made the changes, and I say to you that there is only one place that this order could have come from, and that is from Mr. Forster. [5279]

Now, Mr. Forster's testimony about these changes is even more contradictory and unbelievable than Mr. Erickson's.

In the first place, Mr. Griffin, in his opening statement here, said that it was at the end of November, 1949, that this conference occurred, in which Mr. Forster objected to the profit, and Mr. Griffin said to you that it was the big profit in November, or a profit in November, that he was objecting to, because November, in the history of the business, never showed a profit, and he said that at the end of November, this November profit being out of line, that Forster objected to it. Mr. Griffin could only have received that information from his client, Mr. Forster, and it is obvious that Mr. Forster was trying to admit to an annual 1949 figure, which was used for income tax purposes.

But then, when the work sheets were introduced in this case, the work sheets showed clearly that there was no profit for November. There was a loss for November, and then Mr. Forster was required to take the stand and admit that, yes, it was the conference at the end of January, 1950, that he objected to the income, but then, what does he say? He says at first he didn't object to the annual figure, it was the [5280] profit for the month of December he objected to, and that December never showed

a profit and he said, "Here comes Taylor, and figures out a profit of twenty thousand dollars for the month of December, and I told him it was impossible."

Well, as a matter of fact, even at that point on the stand, Mr. Forster first said there was a profit shown by Taylor in both November and December. We first showed him the November statement showing a loss, so then he said, "Well, I didn't testify there was a profit in November; it was December."

But, the work sheets themselves showed that the original figures that Mr. Taylor arrived at at the end of January, 1950, showed a loss of about twenty thousand dollars for the month of December, and not a profit of twenty thousand dollars. Mr. Forster went back and forth on this. First, he said that there was a twenty thousand profit in December, and he said there was a twenty-five thousand profit in December, and then he said Taylor told him the annual profit looked like $127,000, and then on redirect by Mr. Griffin, he said it looked like 110 or 115 thousand. The second is that Mr. Taylor's work sheet, when originally put in front of him, and it is here in [5281] evidence, when originally put in front of him at the end of January, 1950, showed $101,000 profit, and a loss for the month of December.

So, then, Mr. Forster admitted finally that he did take objection to the annual figure, the annual profit figure, and then he said that—he said it was impossible, and that he told Taylor to look it over, and that is all he knows about it.

That is all he knows about it—never heard about it again until after the investigation started. Admits he signed the return, but he didn't inquire, and he didn't ask either Erickson or Taylor what had happened; whether they found anything.

No, he raised this big fuss and said it was impossible, that there must be something out of line, that he couldn't have made a profit of that size, but yet he would have you believe he went over and signed the tax return without even asking whether they found anything or didn't find anything.

Now, I say to you that that is completely unbelievable. No man, least of all a man who had built up a chain of enterprises by controlling every penny and by operating more cheaply than his competitors and out-competing some of the largest firms in this nation, no man who had done that, or any businessman who had [5282] truly believed that a profit was too high and that it was wrong and that there was error and said it was 'way out of line to the year before, no such man would have signed such a tax return and never asked anybody whether they had found anything wrong.

His testimony is simply not credible.

Mr. Taylor's testimony—and I point out to you that you did not hear Mr. Taylor's testimony contradicted or impeached while he was on the stand—his testimony on these 1949 adjustments has been consistent all the way through, for the Agents and here. He says he went in, he figured out the profit, he showed it to Mr. Forster and Mr. Erickson was there and Mr. Forster raised Cain about it, and he

told him that this was what the books showed and that the figures were accurate and he said that if there were any errors, there were errors on Mr. Erickson's books, and if there were errors, he was glad to correct the figures, and if there were errors, he would hold his ledger open and he could reflect it. In the beginning of March, 1950, he goes out and he is given these changes, and he writes these changes on the work sheet correctly in a separate column for everybody to see, and he makes the corrections caused by them on his work sheet, and he makes out the income tax return, and he has Mr. [5283] Forster come in, and then explains them and points out what the figures are that are given to him, and he says, "These come from you, and it is up to you to substantiate them."

Now, all of this happened, Ladies and Gentlemen, at a time when Mr. Taylor was in difficult troubles of his own. On March 2nd, that same time as he was making these changes in this inventory, he pled guilty to tax evasion in his own case. Is it believable that any man at that time, under those circumstances, would have consciously and knowingly and wilfully altered his figures to wrongfully reduce the profit by fifty thousand dollars of Issaquah Creamery Company, knowing that they were—that those entries were false? It just is simply not believable, and we say to you that looking at the thing as a whole, that looking at the contradictions in all of the testimony, looking at the consistency in Mr. Taylor's testimony, looking at the motive of the people involved, that it is obvious that when

Mr. Taylor left that conference, Mr. Forster instructed Erickson to make these changes, and he knew all along that they had been made, and it was on his direction and for his benefit that the changes were made in these books at the end of 1949. [5284]

Now, the only other issue that the Government raises as to Issaquah Creamery Company is the issue as to the changes in milk price in 1948 and 1949 between Issaquah and Alpine. Mr.—there is no evidence in the record that Mr. Taylor had anything to do with that whatsoever so that I will pass it over except to say that I, myself, can't see where they have anything to do in this tax case.

They were buying and selling milk, and entitled to put any price they pleased on it, and I can't see where that should be in this case at all, but that is no concern of mine.

Now, in addition to these matters of Issaquah Creamery, and, of course, some of the matters I touched on heretofore bore on Alpine, too, because some of these expenses were charged off at Alpine, on personal expenses, but, in addition to these matters, the Government in its exhibit 279, and you should look at 279, and 280, they are the details of what the Government charges in this case.

In 279, the Government claims that Mr. Forster got income from other corporations in which he held an interest which should have been reported, and which was not reported. [5285]

One of these is Simonson and Forster. Mr. Forster was paid one hundred dollars a month from 1948 and 1949. Mr. Moriarty yesterday said some-

thing about 1945, 1946, 1947, but there is no evidence of that in this case.

We are dealing here with 1948 and 1949. Now, there is a conflict in the testimony between Mr. Taylor and Mr. Forster, as to what happened at the end of 1948 with regard to this matter.

Mr. Taylor told you that he talked to Mr. Forster about it, and that these hundred dollar checks had been sent during the year, but it hadn't been determined what they were, whether they were going to be a loan or salary, or what they were, and they were set up in the general expense column, meanwhile, and that he talked to Mr. Forster about it at the end of the year, and Forster said it couldn't be a salary, because the company was short of capital and that, he said, "Talk to Mr. Simonson about it," and that Mr. Simonson had some arrangement on it, and that they would have to put it back.

And, Mr. Taylor says he talked to Simonson and that Simonson was buying equipment out of his funds, and that he would collect the $1200 for Mr. Forster, and that should be so handled on the books [5286] of the company, and we have the work sheets of Mr. Taylor at the end of that year in evidence in this case.

This was a work sheet made at that time, and no afterthought made for the purpose of this trial, and it was made at that time and in that work sheet the one hundred dollars is taken out of general expense and charged back to income of Simonson and Forster.

In other words, no deduction was taken for that one hundred dollars, so it was obvious it was not to be treated as salary to Mr. Forster in any way. It was charged back to income, and it was set up in the equipment account—rather, it was an item in the equipment account for this equipment which had been put in. It was larger in amount than this, but part of that was the $1200 which Mr. Forster owed and the $1100—and the $1100 figure which Mr. Simonson himself had owed to the corporation, and that was how the equipment was thereby paid for.

In other words, at the end of 1948, this was to be treated as a loan to Mr. Forster, not as salary to Mr. Forster, and he was to repay this money, and it is reflected in the accounts of the company at the time in accordance with that basis. Mr. [5287] Forster says no such conversation occurred, but one of the girls from Simonson and Forster told you, and she was—I have forgotten her name —she was the girl who was working in the office at the beginning of 1949, and she told you that she overhead a conversation between Mr. Taylor and Mr. Simonson about this.

Unfortunately, Mr. Simonson has passed away and can't confirm what that conversation was, but here is something that happened at the time and the amounts were taken out of expense. They were charged back to income and they obviously were not to be treated as a salary or compensation to Mr. Forster at that time.

Now, the same thing was true of 1949. Unfortun-

ately, the work sheet for 1949, which was present here prior to the trial, got lost. I can well appreciate how it would get lost in the state that the records were in in the room upstairs, where they were held, but Mr. Taylor told you that the same type of adjustment was made at the end of 1949.

This is a good stopping point, your Honor.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess, and the Court calls your attention to the admonition given you on similar occasions, and asks that you heed it on this [5288] occasion.

You may now be excused.

(Whereupon, the Jury retired from the court room.)

(Whereupon, at 2:44 o'clock p.m., a recess was had in the within-entitled and numbered cause until 2:59 o'clock p.m. May 11, 1954, at which time, Counsel and Defendants heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Ladies and Gentlemen: Another one of the sub-

sidiary issues raised by the Government in this case is that Mr. Forster should have included in his returns, or that Mr. Taylor should have included for him, the amounts in each of these years equal to sums paid to Mary Finstad with regard to the purchase of stock in Finstad and Utgard. They say that Mr. [5289] Taylor for a number of these payments should have seen that an equal amount was included in Mr. Forster's return. This situation is a very complicated one and much more appropriately would be in the Tax Court for a real argument as to whether it is taxable or not than in a criminal case where we are dealing with knowledge and criminal intent.

The factual situation is that Egeness, together with some associates, was purchasing the shares of stock of Finstad and Utgard from his aunt, Mary Finstad. This was on a contract. Mr. Egeness and his associates were obligated to pay the balance of that contract.

For several years, they had been making payments, and they did show they were doing so, by having those payments made by check of the company, Finstad and Utgard, and charged to their salary account as the personal expenditures of Mr. Forster in this case should have been charged on Mr. Erickson's books.

Forster entered the picture at that time and entered into an agreement with Mr. Egeness and his associates, giving to Forster the right to buy their interest in their contract with Mrs. Finstad. This agreement is in evidence. You can read it. It [5290]

doesn't obligate Forster to do a thing. Forster has a right to stop at any time, and not be liable for any further payments whatsoever, but he had the right, if he so desired, to buy out this stock, to buy the interest in the contract, and to make the payments to Mrs. Finstad and to buy the stock.

Now, after this agreement was entered into, Mr. Egeness went right on as before, making the payments to his aunt, Mrs. Finstad, by corporate check of Finstad and Utgard, charged to his salary account. Mr. Egeness was still liable to Mrs. Finstad; Mr. Forster was not. And, these payments, as they were made, month by month, extinguished Mr. Egeness' liability. He was directly concerned. If Mr. Forster had decided not to go ahead with this, Mr. Egeness would have had to pay for it, and the stock would have been his.

Mr. Griffin spoke about Mr. Forster having some credit on this obligation. Mr. Forster had no obligation on this credit to Mrs. Finstad.

The Government contends, for some manner of reasoning, that these payments are taxable income year by year, as made to Mr. Forster on his income tax returns, and the claim is that the salary of Mrs. Egeness, to which these were charged, was not really a [5291] salary of Mr. Egeness, and that these checks were merely distribution of corporate funds used to pay off Mrs. Finstad, and their reasoning from that, or the reasoning of the man they put on the stand upon that was it was a constructive dividend of Mr. Forster.

Now, before Mr. Forster arrived on the scene,

Egeness had been getting a salary of $450 a month plus purchasing 25 percent interest in the business. Mr. Forster told you he agreed with Egeness he should get the salary he was getting, plus 10 percent of the profits, but Mr. Forster says what he agreed to with Egeness was $300 a month plus 10 percent of the profits. Egeness testified his salary was $600 a month plus 10 percent of the profits, and he testified it was arrived at at a meeting in which Mr. Forster was present, as well as Mr. Taylor. Mr. Forster denied being present at that meeting.

Mr. Forster further tells you that he didn't know anything about the making of the payments to Mrs. Finstad, and he didn't know how they were being made. He even says he never bothered to inquire in the four or five years that are here involved, and after he entered into this agreement as to how they were being made. [5292]

I just wonder whether he had any interest in the contract or not.

Now, there is a further fact in dispute on this matter. Mr. Taylor says that there was an arrangement that Egeness was going to get some of the stock when these payments were completed and that Mr. Taylor was under the impression that one reason for Mr. Egeness continuing to pay off this contract out of his own salary was that Mr. Egeness was to get part of the stock when the payments were completed.

Now, Mr. Forster, on cross-examination admitted that there was some such arrangement. He admitted

that there was an arrangement between himself and Mr. Egeness whereby Egeness was to have the right to get some stock and he in effect, as I recall it, said, that he was to get the stock when the payments to Mrs. Finstad were completed, but Mr. Forster says that understanding was arrived at after this method of paying off this contract by Mr. Egeness was set up in 1943, or whenever it was that they first went in there. And, they put Mr. Egeness back on the stand on rebuttal, and asked him two very carefully phrased questions: the first was whether he had at any time owned an interest in Finstad [5293] and Utgard. Of course, he had never owned an interest. The stock was held at all times by Mrs. Finstad until 1950, and as Mr. Forster testified, in 1950, when the stock was paid for, the investment had started, and they decided to hold up giving Egeness any stock until they saw how the whole thing was coming out. So, of course, Egeness never owned any part of Finstad and Utgard.

Now, the second question they asked him was whether he, in 1943, in the presence of Forster and Taylor, entered into an agreement to purchase one-fourth interest in Finstad and Utgard, or any interest, and he said "No."

Well, now, Mr. Forster's testimony was that his understanding with Egeness was not arrived at at a meeting where the three were present. He said, as I recall it, that he talked it over with Egeness, and he talked it over later with Mr. Taylor, and he reported back to Egeness again and that was Mr. Forster's testimony as to how this general arrange-

ment was reached, and that it was not done at a meeting at which all three were present, and which was the question asked Mr. Egeness here. Egeness in no way contradicted Forster's testimony that there was an [5294] arrangement whereby Egeness was to get some stock. The only direct conflict in the testimony is when the arrangement was made. This conference in Mr. Egeness's original testimony, the conference at which his salary was arrived at was July, 1943.

Forster had come into the picture and had made a verbal arrangement several months earlier than that, for the acquisition of this contractual interest in Finstad and Utgard, so that there was a several months' period before this salary arrangement was set up. There is nothing to show that this arrangement between Forster and Egeness wasn't made at that time, but even if it was made after that time, or made at any time before 1945, it still has a direct bearing on this case.

Now, further, there is this further factual situation to keep in mind. Mr. Egeness testified, truly, that his salary was $600, but he—and that tends to confirm his salary, and also tending to confirm it is the fact that he reported the entire salary in his return and paid all the tax on it. Mr. Egeness attempted to equivocate on this in his testimony. He first testified he paid only one-half and the corporation paid one-half, and then we confronted him with his sworn testimony in the preliminary hearing in this case, where he had testified under [5295] oath that he had paid all the tax, and he admitted on the

stand he paid all the tax, but he said the corporation reimbursed him for part of it.

The Finstad and Utgard books are in evidence here as Exhibits A-19 -20 -22 and -26, covering all of the years here involved, and those books—and we have checked them—show definitely that Finstad and Utgard Corporation did not bear any part of the tax on Mr. Egeness's $600 salary.

In each of the years, there are corporate checks written to the Collector of Internal Revenue for Mr. Egeness' tax, or a part of it, and those checks are charged to Mr. Egeness and paid for by him.

Mr. Egeness's testimony was not correct on that particular, and I want to come back to that at a later point in my argument.

Another significant thing here, Ladies and Gentlemen, is that Touche, Niven's analysis concerned Finstad and Utgard which was put in as an admission by Forster against his interest, but not binding on anyone else—it is Exhibit 251—Touche, Niven's analysis shows that Mrs. Finstad was overpaid by one thousand dollars, and to whom was the money repaid? It was repaid to Mr. Egeness. Now, if Mr. Egeness was not paying this contract out of his own funds, why [5296] would the one thousand dollars be repaid to him?

Now, where does all this complicated matter leave us taxwise? The Government says that this is some way taxable to Mr. Forster. They even put Mr. Holtberg on the stand as a certified public accountant who testified that this was a constructive dividend, and in cross-examination, I brought out that

he had taken the stand and so testified without ever checking the law on the subject whatsoever, and I think it is not excusable, Ladies and Gentlemen, for an expert witness in a criminal case, where the liberty of three men is involved, to take the stand and testify that something is taxable income without ever checking the law to see whether it is taxable income.

We offered an expert on the subject, Mr. Potts, experienced in tax law. He was not permitted to testify because the question is one of law, and not one of fact for the Jury, but we don't need an expert, Ladies and Gentlemen, for any ordinary taxpayer to know that there is a lot of doubt as to whether Mr. Forster was taxable in the years 1945 to 1949 on any income on this matter. Mr. Forster, as Holtberg told you, was on the cash basis. Most all individuals are on the cash basis, and on that basis, as you know, you don't report income until you receive it in your [5297] hands.

Now, the only person who actually received any money here was Mr. Egeness, and his salary was considered paid to him, and Mrs. Finstad received the checks, and they were paid on the stock and Mr. Forster received not one nickel in hand to be reported on a cash basis.

I say to you there was no taxable income on this matter in the years 1945 to 1949 whether there was an understanding between Forster and Egeness as to whether he was to get some of the stock or wasn't, and it was not until 1950, when the testimony shows that Mrs. Finstad was finally paid and

they delivered the stock to Mr. Forster and repaid Egeness only one thousand dollars, and didn't give him any of the stock that Mr. Forster himself says there was an understanding to give him at the time of this arrangement. They gave it all to Forster and yet the escrow instructions by which Mr. Croson, an attorney in this City, was holding that stock, shows that Egeness had the right to have that stock held until he was repaid every single penny out of his salary account or otherwise, but he did not get repayment except for one thousand dollars, and at that time, Mr. Forster had income, and got, on a cash basis, [5298] in hand the stock. Mr. Taylor was no longer there. It was in someone else's hands. I don't know how it was handled on those returns. Those returns are not in evidence here, but we say to you that the whole issue is improperly in this case, and I venture to say that sooner or later, when the Tax Court gets the civil side of this case, we will find Mr. Forster's attorneys up there arguing that it is not even taxable civilly to Mr. Forster in these years.

Now, another corporation that the Government contends paid income or from which income was received by Mr. Forster is the Renton Ice and Ice Cream Company and Forster did receive during these years, payments not from Renton Ice and Ice Cream Company but from Baskett and Schneider as part of the salary that they were receiving from that corporation.

Now, on this matter, there is agreement on certain fundamental facts. It is agreed that there was

a meeting of directors in September, 1952, shortly after this company was organized, and it is agreed —in fact, the minutes are here for you to see—that at that meeting, the salary of Mr. Baskett and Mr. Schneider, who were working full time running this business, were fixed at five hundred dollars a month. It is further agreed that at that meeting [5299] it was decided that Mr. Baskett and Mr. Schneider would each draw $200 currently month by month, and that they would get the balance at the end of the year.

Now, both Mr. Taylor and Mr. Schneider testified that Mr. Forster was there at the meeting. Forster says he doesn't recollect it. He wouldn't deny it. He doesn't recollect it, but he admits he was interested in the matter of what salaries were paid out of his companies, but he didn't recollect being at the meeting.

There is a very sharp divergence on two facts concerning that meeting on September 30, 1942. First, Taylor says it was agreed at that meeting between Schneider and Baskett and Forster that the balance of the salaries voted to Mr. Baskett and Mr. Schneider were at the end of the year to be divided three ways with Mr. Forster participating.

Now, interestingly enough, Schneider,—although he says he was at the meeting—denies that there was any discussion whatsoever about any division of those salaries, the amounts that weren't paid currently, and Mr. Forster also denied that there was any discussion, although, of course, he doesn't even recollect being there, so I assume has no [5300]

recollection of whether there was any discussion or wasn't any discussion.

The second point of diversion is that Mr. Taylor said at that meeting, when this matter was agreed upon, that he said that it was all right as long as Mr. Forster put his part into some books where it could be reported. He said to put them in his Alpine receipts where they would be reported because he said it shouldn't go on the return as a salary because it wasn't a salary, Renton Ice wasn't paying a salary to Forster. They were paying salaries to Baskett and Schneider.

What Mr. Forster was to receive was payment from the two individuals.

Mr. Taylor said it couldn't be set up on Mr. Forster's return as salary what should go in some place where it could be recorded and on the Alpine receipts, that was a logical place for it. The Alpine Dairy was a wholly owned proprietorship business, and if it went on there, it would be on his return.

Mr. Taylor tells you that that was what went on at that meeting. It was denied by Mr. Schneider and Mr. Forster, not recollecting being at the meeting simply denies anything said to him along that regard. [5301]

Now, what is the truth of this matter? Mr. Schneider would have you believe by his testimony that he and Mr. Baskett attended this meeting on September 30, 1942, and he says Forster was there, —they were all there—all the stockholders, Forster, Baskett and Schneider, and each owned one-third interest, and he would have you believe that there

was discussed the salary he should receive, and that he and Baskett would receive five hundred dollars a month each and that he came from that meeting, and Baskett came from that meeting, believing that each would get five hundred dollars a month, the entire amount of the voted salary.

He says there was no agreement that Forster was to get anything. And, Schneider, says that two years later, out of a clear blue sky, Mr. Taylor subsequently directs him to pay one-third of the balance of the salary voted to him and to Mr. Baskett to Mr. Forster. A big surprise. He had gone on for two years thinking he was going to get the whole salary, and now Mr. Taylor orders him to pay one-third of that to Mr. Forster, and he says he protested to Mr. Taylor. Apparently it didn't do any good. He went ahead and paid one-third to Mr. Forster, and he tells you he never asked Mr. Forster whether he had to do it, and [5302] never talked to him, one way or another, and on Taylor's order, he sends one-third of his salary to Mr. Forster and never peeping to Mr. Forster, never saying a word.

No two men, Ladies and Gentlemen, each owning one-third of this business, one of them the president and the general manager, who had attended a meeting of all the stockholders and at that meeting being voted five hundred dollars a month each, and it had gone on for two years, thinking it was their own money, would have paid half of the balance of their salary to Mr. Forster on the order of their fifty-dollars-a-month accountant, without asking Mr.

Forster "How come?". You know, as well as I do, that that was all agreed upon ahead of time, just as Mr. Taylor told you between those three people.

Mr. Forster says he was even surprised to get the money, all a surprise to him. He never heard about it. Just like manna from Heaven and the next time he sees Mr. Schneider, he says "Thank you," no other conversation, just "Thank you."

Mr. Schneider claims he was surprised every year when Mr. Taylor ordered him to give half his money to Mr. Forster, and he sent it and never discussed it with Mr. Forster. [5303]

Now, it is obvious that they are not telling you the truth about that, Ladies and Gentlemen, and the only story, the only statement here on this subject that jibes with what the facts had to be, was Mr. Taylor's testimony on the stand when he says at the very first meeting it was agreed between these three people that they were to handle it that way, and that his job was to reflect what they agreed.

After all, he was simply employed as the accountant, and he told Mr. Forster to put it in this Alpine receipts, so that it would be reported.

If Forster, then Schneider will take the stand and tell you a story as they did which is obviously not true, which is that they never agreed on this, isn't it just as likely that they would take the stand and deny that anything was said about putting this in the Alpine receipts?

Mrs. Lovenger, Mr. Baskett's widow, offers a refreshing contrast to this testimony of Schneider and Forster. She wasn't surprised. She never asked

Forster nor Schneider or Taylor about the split because her husband told her prior to his death, and she logically assumed it would go on as before. She assumed that this was agreed between the three stockholders at the very first meeting of this corporation. [5304]

Now, it is interesting, also, that when Taylor slipped up in August, 1945, and wrote checks for a 50/50 split with Forster, you will find, if you examine the Renton check register here, that the checks were cancelled, and Schneider took over and the system was changed, and single checks were written, as Mrs. Lovenger told you.

Schneider brought them out to get her to sign them, and took her down and got cashier's checks and sent the cashier's checks to Renton, and still he says, "Mr. Taylor ordered me. Mr. Forster didn't know anything about it."

But, Mrs. Lovenger tells you it was Schneider, not Forster, who was doing that.

Now, it is interesting also that Mr. Schneider erroneously testified on the very same point that Mr. Egeness erroneously testified on. Both Schneider and Egeness are connected with Forster, and I submit to you, in the light of all this, whether they can be classified as disinterested witnesses, particularly in view of the testimony of each of them, and the testimony of Schneider that is absolutely unbelievable.

Now, what was the point on which they both erroneously testified? The question of whether they paid [5305] taxes on their full salary. I have al-

ready covered Egeness. On Schneider: Schneider admits and he claimed he didn't pay the full tax on his whole salary, that Mr. Taylor took care of the other taxes, but he admits he included the full salary on his income tax return, so he had to pay the full salary, unless the corporation paid it, and the check register of the Renton Ice is in evidence, and we have examined it, and there isn't a single check written that could by any possibility, constitute a payment of Mr. Schneider's tax except withholding, and withholding, of course, is deductible from Mr. Schneider's salary before it was ever paid to him.

Now, the question may arise in your mind, Ladies and Gentlemen, as to why Taylor did not check to make sure that Forster was including this income in the Alpine receipts as he was told to do, but Taylor was not being employed to carry out his employer's income or to doubt his employer's word. He was employed to rely on the figure given him by his boss. He did ask each year, and it is admitted he did ask Forster each year for any other items of income that should go on the return, and there is no contention that at any time did Forster ever tell him that this income was not included in his business books and should be [5306] put on the return.

Forster was getting the money in hand paid by the checks. He knew if he received it, and it wasn't put in the books, he should have told Mr. Taylor about it, and Forster himself stated to Marx, as Marx testified, the very first time Marx talked to

him, in April, 1950, if all the items on his income did not get in his returns, Taylor was not responsible. He was simply making out returns from the figures Forster gave him. Maybe, if Taylor was very conscientious on this matter during these years, he would have checked further to see if these had gotten into these receipts, but he is charged here not with failure of conscientious checking, not with what he might have done, but with knowledge —what did he know—and there is certainly no evidence in this case on this point, as on all the other points in this case, that Taylor knew that that income wasn't being included in the Alpine sales and receipts—miscellaneous receipts — except Forster's own testimony on the stand against Mr. Taylor, and I say to you that here, as in every other place, Mr. Forster's testimony simply could not be believed, and when he will take the stand and say that these checks came to him as a great surprise and he said "Thank you" and never discussed them with anybody and never discussed them at any time, you can't [5307] believe what he says about that Renton situation whatsoever.

Now, the reason for this arrangement at Renton is clear in the testimony. It is undisputed that Forster wanted to keep in the background. He didn't appear in the corporation at all. He had Taylor act as his—as the front for him in this matter, and both Schneider and Forster testified that Williams, the man who sold it to them, and that they had to pay him for over a long period on contract, a man who was in a competing business there

in Renton, and didn't like Forster, and never would have entered into the transaction if he knew Forster was involved, and also Forster and Taylor told you that he had another competitive problem in that Renton area.

Perhaps their concern of these situations went too far. Maybe they didn't need to do what they did. Maybe the methods they used weren't appropriate for accomplishing what they were seeking to accomplish, as far as the public was concerned, or the competitor, or anyone else, but that was for the owners of the business, Mr. Schneider, Mr. Baskett, and Mr. Forster, not anyone else, to decide.

As they hit on this method, Mr. Taylor was employed as accountant. He had no interest in [5308] the business. His job was to reflect the decisions of the owners. He knew that Schneider and Baskett were paying tax on the entire salary voted and he assumed Mr. Forster was likewise paying tax on the amount Baskett and Schneider were paying to him.

Now, I should mention one other matter concerning Renton Ice and Ice Cream, although it has no direct bearing whatever in this case, and that is the charge made by Schneider that Taylor altered figures for the accounts payable at Renton for the end of the fiscal years 1946 and 1947.

It doesn't affect any of the tax here of either Mr. Forster or the Issaquah Creamery Company but nevertheless, the charge has been made.

Now, as to 1946, Schneider says he totalled the figures in these little books he, Schneider, kept; but

Mr. Taylor told you that after the first few months at the time he got out there, Schneider didn't have them filled out and Schneider was too negligent, and finally, from that time on, he had to get his accounts payable from the invoices and not the books but Schneider said, "Here are the books,'" and he got $8,338.05 as a total for this month, and he wrote it in, and later, at Taylor's instructions, he altered and raised it to $14,338.05. [5309]

Now, this is at the end of July, 1946. I wish you would look at that figure. The month—they have got the months wrong. The month will say "August, 1946," but that is the July month. There is absolutely no change or erasure of any kind in that figure, as Mr. Taylor pointed out to you when he testified. There has never been a change in that figure. It is in Schneider's writing, and it says $14,338.05.

Now, Mr. Taylor told you with regard to that, that he normally didn't use the book, and he went out there and was making an analysis of the types of accounts payable at this particular time, and he got all the figures together for beer, and mix, and retail, and down in the left-hand lower corner of that sheet, you will find where he jotted in mix, beer, and retail, the separate figures, and the total for $14,338.05, which Mr. Schneider wrote in his own figures above.

Taylor tells you that the month wasn't even complete, that the figures weren't all filled out. Schneider admits that Taylor derived the figures while Taylor was in the office, but he didn't know how he

got them. It is obvious, however, he got them from three separate categories of merchandise, and not by raising [5310] any existing total on the sheet as Mr. Schneider would have you think.

Now, as to July 31, 1947, Schneider says that he saw Taylor write in nine "1's." Taylor told you he did not write in those nine "1's".

In fact, Taylor tells you he didn't even see the book that month, and that that was the usual situation when he went out there.

Schneider says that the first total at the end of these columns is in Taylor's writing, but we called Revenue Agent Marx to the stand, and he certainly saw those, too. He spent long enough, as described by Mr. Griffin, going over all of these work sheets of Taylor's, for the years and years, and he found Mr. Taylor's writing, and he told you quite clear it was not Mr. Taylor's writing at the end of the 1947 accounts payable. In fact, the total at the end of the list is not a correct total of the pages of that month, whether it had the nine "1's" in or it did not have the nine "1's" in.

Where does that come from? The total is actually derived from three separate figures. Those three figures are accounts payable, accrued salaries and taxes payable. Those three total exactly the same as the end of this figure for the end of July [5311] 31, 1947, accounts payable.

As Mr. Taylor told you, he sent out a typed summary statement, as he did throughout all these businesses, out to Mr. Schneider at the end of the year, and it is quite possible that those three items were totalled in one figure in that typed statement, and

it seems probable to me that that is where that figure came from—that Mr. Schneider took it and entered it on the books.

Taxes, for example, never have been entered on those books, and yet you have to add in the amount of taxes written in at the end of the accounts payable.

Now, the remaining items that are put in issue in this case by the Government, as evidence of tax evasion consisted of interest received by Mr. Forster, which he failed to report. Forster and Taylor both agree that at the end of each year, Mr. Taylor asked Mr. Forster for the interest he had received during the year so that it could be put in his return.

Now, Mr. Forster at one point said that there was some information that he gave to Mr. Taylor at the end of each year that never got on the return, but when it was asked what it was, he was unable to point out one single thing.

Now, Taylor, when he asked his client for interest, and he is given a figure or figures for [5312] interest, certainly isn't required to doubt the word of his client, or to go around checking to see if there wasn't further interest given him. He is entitled to take the interest from Mr. Forster and put it in the return.

Forster knew what interest he was receiving, and if he didn't give it to Mr. Taylor at the end of the year, it is Mr. Forster's responsibility and not Mr. Taylor's.

Now, this constitutes, Ladies and Gentlemen, all the issues actually involved in this case. This con-

stitutes all of the charges of the Government which they say proves tax evasion in this case.

Mr. Griffin said to you this morning that all this failure to pay taxes arose from the mess in which Taylor's books were kept. But, let's think back over the issues that are really involved in the case, and see whether or not anyone of of them has anying to do with the way Mr. Taylor kept his books.

The diverted receipts that never got on the books, the personal expenses charged to business—they are simply charged on Erickson's journal as business expenses, and when they get to Mr. Taylor's books, they are in a lump sum figure for the various business expenses. [5313]

Certainly, on Mr. Taylor's ledger, it would make no difference, and wouldn't correct that situation. The year-end inventory, 1949, Mr. Erickson made it on his journals, and it is admitted here that Mr. Taylor merely took those figures and put them in his work sheet and then in his ledger.

On that, Mr. Griffin says this year-end 1949 adjustment was split up in his ledger. I think if you look in his accounts payable you will find that the total has been increased in one figure, and not split up all over the place. But, Mr. Griffin would have you think that the manner of keeping Mr. Taylor's books was responsible for this. It certainly wasn't responsible for the interest given him at the end of the year. That never went on the books. Certainly not responsible for Renton Ice. That was nothing to do with the books. It was not responsible for Finstad and Utgard if that were thought to be in-

come, which I say is not. Or, any other items.

All this business about the books is just a smoke screen to try to becloud the issues and they go into a lot of adjustments and the accountants admitted that any accountant in handling a general ledger must make a lot of adjustments at the end of the year and at other times, but they bring out these adjustments and make it to prejudice Mr. Taylor, [5314] if possible, and make it appear that here was a lot of manipulation.

They don't tell you that one adjustment here was balanced off by another adjustment there; that the cash on hand, which they say was understated from what they now figure how it was, is balanced off by the overstatement of the cash in the bank; that figures adjust themselves back and forth.

They don't tell you that; they don't tell you that in this period of 1949, and with 1948, also, there were large and complicated contracts taken with the Army, I believe, and certainly with the School Board, where Alpine took the contracts for milk but the contract was performed by four different dairies, Arden's, Kristoferson's, and Alpine, and Carnation. Alpine was selling the whole thing. The payments to the others were made from Issaquah, and that required a lot of adjustments, but all they want to do is to throw up a cloud of these things in an attempt to make it appear that there must be something some place wrong with these books, and that accounts for all this tax evasion here, and yet Mr. Gorans, on cross-examination, admitted that none of the alleged discrepancies that he was testi-

fying about, and he later said those weren't discrepancies because they may have been all O.K., [5315] he just couldn't understand them, he said none of them affect the issues raised in 279 and 280, which is the Government's statement of what they think proves this case for them.

Now, we are not certainly here contending that Mr. Taylor's books were models of excellence, that they were complete with all the posting references and descriptive material and so on with regard to what are in them and all of that. Mr. Taylor was performing work for the type of people who wanted the accounting done reasonably, and he had devised what he felt to be the simplest possible method of adequately reporting the income of his clients, and a method whereby a lot of things—I was going to call it "fancy stuff"—I shouldn't call it that—it is all very good—it is all very fine to have full posting references, but it takes time, and costs money—but he was performing a service that was much simplified, and we don't say that they are books that Touche, Niven would have kept, or someone else would have kept. We don't say there are not errors in them, in addition here and there, but what has that got to do with this case? This case is concerned with wilful and knowing tax evasion, and the Government has come out with particular charges here, and none of them have the least bit to do with all of these books that were [5316] testified about.

Mr. Griffin, on cross-examination of Mr. Taylor, went back twenty years to all of these accounting

statements where different figures were shown in statements given to a bank as compared to the books, and so forth.

They likewise have nothing to do with the case, and I don't have time to go into them in detail, but just as illustrative of the type of thing involved, I would like to take two of those exhibits and compare them, and before I do that, Mr. Griffin this morning spoke about exhibits A-99 and A-100, which were two of these financial statements back in the '30s, reading as of the same date. I believe it was at the end of 1938, and he says that one of them showed a deficit in cash, and another showed a deficit, I think, of thirteen hundred dollars in cash.

Well, neither of them showed anything like that. 99 and 100 both show cash on hand. Now, he is thinking of some other exhibit. I have forgotten myself which ones they were, where it was shown at the end of a particular year an overdraft in cash on the books, and when they made up a statement for the bank, what did they do? They took the checks that were in transit that had been written and not yet cleared at [5317] the bank, they took them out, and they actually had a bank balance at the end of the year in so many dollars, and on the books, they had charged off the checks they had written, which had not yet reached the bank. They took those out, and set them up as accounts payable, so that their cash didn't shown an overdraft but showed what was in the banks and the accounts payable showed the checks outstanding.

It was that type of an adjustment that we have through here, but Mr. Griffin, going back twenty years, would try to make you think it was something to do with this case.

Now, let's take, for example, Exhibits A-65 and A-95. They are both financial statements as of December 31, 1935. The first one was a statement given to the Peoples Bank, which at that time had a proprietorship interest in this company.

The second one was given to the bank at Stanwood, which was loaning money, and given to Mr. Beadon Hall, whose brother was president of the other bank.

The first statement shows a loss of $1,639.37, and the later statement shows a profit of $13,732. What is the difference between the two statements? In the first place, the second statement [5318] picked up $2,510.72 in additional sales on top of the 407,-000-odd sales in the first statement.

This small amount may be some money that came in at the end of the year, and hadn't been picked up in the original statement. Then there was an adjustment involving elimination of reserve for bad debts, which was carried in the books, and this resulted in an increase in the year-end inventory of $1,000 as a part of the adjustment, wiping out the reserve for bad debts.

Now, the reserve for bad debts is an allowable deduction for tax purposes, where you are carrying your bad debts on a reserve basis. But, for the purpose of the bank, these debts were still owed to this company, and they felt that it was proper to elimi-

nate the reserve for bad debts for that purpose.

Then, Mr. Taylor added that $6,900 of Forster's undrawn salary, so that the statement, issued for credit purposes, showed the true security that the bank would have in loaning money to that company, because the bank—it comes in ahead of the stockholders' withdrawals from the company, and, so, for credit purposes, what the bank wants to know is what would the—what are the assets that they could get if they foreclose on this company's [5319] business, and consequently the undrawn salary owed to Mr. Forster was taken out.

Now, next, Mr. Taylor made a $4,490 adjustment to depreciation. The depreciation on the books is the rate permitted by the Government.

The Government puts out a booklet showing depreciation rates, but the bank is not interested in book figures. The bank is interested in market values. What would those assets bring if they had to sell them at a foreclosure sale?

And, so, as Mr. Taylor told you on the stand, the depreciation and market value was changed to an appraised value, actual appraised value, of the assets.

Now, every other figure, Ladies and Gentlemen, on these two statements is exactly the same. These adjustments that are here made are as Mr. Taylor told you on the stand, a collection of various changes which present a true picture for credit purposes on the one hand, against the book figures, which are a true picture for tax purposes on the other hand.

Now, certain other items should be mentioned. In the Finstad and Utgard inventory and accounts payable, there were certain changes made. Now, the [5320] increase in accounts payable was due to bonuses which were owed to farmers for milk and it is admitted here that at the end of the year, there were bonuses owed to these farmers for milk that wasn't reflected in the books. When Mrs. Simonson prepared her statement from the books, showing her accounts payable, this liability was not in there, and it was a liability of the company. It should have been reflected in the statement if it was going to be an accurate reflection of that business.

Now, the amount was uncertain. It hadn't been computed at the end of the year, and in prior years, as you will find from the Finstad and Utgard ledger here, if you will look at it, the amount would actually run over ten thousand dollars, so that this figure was carried on as the estimated amount at the end of the year in accordance with the past history and it was based on actual liability that actually existed at the end of the year.

Now, the inventory changes Mr. Taylor testified were made by Mr. Egeness who actually took the inventory. Mr. Taylor wasn't there. He went up once a month, and in fact, none of these pencilled inventory figures on this sheet that was introduced in evidence here, A-44, I think it is—if you would like to look at it—appears in Mr. Egeness's [5321] own writing. All of this as to Finstad and Utgard, again, had nothing to do with the issues in this

case. The taxes of Finstad and Utgard aren't involved here. It doesn't result in any income to Forster or to Issaquah Creamery Company, and like so much of the rest of the evidence, it is brought in here simply in an attempt, if possible, to discredit Taylor, and to help make him the scapegoat of this tax evasion.

I am going on to another subject, your Honor.

The Court: Do you wish to recess, then?

Mr. LeSourd: Yes, sir.

The Court: Ladies and Gentlemen of the Jury:

We will now recess until tomorrow at ten o'clock. The Court calls your attention to the admonition given you on similar occasions, and asks that you heed it on this occasion. In particular, again, I caution you not to reach any conclusion relative to the merits of this case until it is finally submitted to you for your verdict.

You may now be excused until tomorrow morning at ten o'clock.

(Whereupon, the Jury retired from the courtroom.) [5322]

The Court: It is stipulated the Jury have left the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: Mr. LeSourd, do you expect to use your full time?

Mr. LeSourd: No, I expect to close beforehand. My estimate now is one-half to one hour in the morning.

The Court: I had this in mind.

Mr. Keesling, do you know about how much time you will take?

Mr. Keesling: At least two hours.

Mr. Moriarty: Mr. Griffin has one half-hour.

The Court: I understand.

Assuming we concluded with Mr. LeSourd and any response of Mr. Griffin that might be proper, it would leave the whole afternoon available, and if the Government might want to restrict to one-half a day, we might close Thursday.

Mr. Moriarty: Depending on Mr. Keesling's statement, I believe the Government can reasonably forecast it can be completed on the morning's session on Thursday. [5323]

The Court: Then we will give——

Mr. Moriarty: (Interposing) But there are startling differences——

Mr. Griffin: One development will be to reopen at the close of Mr. LeSourd's testimony because of the exclusion of the three major witnesses which we said to your Honor unless permitted so to testify that Mr. Taylor's would be the last word on the subject of financial statements and their purpose in showing the truth, the credit statements and the bonus payments, and I have listened to the last half of Mr. LeSourd's argument on Mr. Taylor's word on this.

As I say, the motion will be made.

The Court: This trial will be recessed until ten o'clock tomorrow morning, and this Court will take a short recess.

(Whereupon, at 4:02 o'clock p.m., May 11, 1954, recess was had in the within-entitled and numbered cause until ten o'clock a.m. May 12, 1954.) [5324]

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated that the Jury and all Defendants are present in the courtroom?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: You may proceed, Mr. LeSourd.

Mr. LeSourd: Thank you, your Honor.

Ladies and Gentlemen of the Jury:

I am told that inadvertently yesterday I mentioned one fact that was not correct, and I want to be sure that the facts that I do give you in my argument are correct, and I want to correct it at this time. I think I told you that Mr. Forster's salary during all of his period was eighteen to twenty-four thousand a year. I find that during a part of the 1930's, his salary was $10,500 and it went to eighteen and then to twenty-four thousand, and then back to eighteen, and I want to correct that.

It makes no difference in what I said. Any salary up in that figure together with his withdrawals were certainly sufficient not to have caused any [5329] suspicion on Mr. Taylor's part that the personal bank account that he had showed any withdrawals of income.

In that connection, I would like to say this, because of some perhaps wrong impression that one may get, particularly if not an accountant.

Much has been made here of these various net worth statements of Mr. Forster in the various years that were prepared from the books of these enterprises. I think Mr. Moriarty at one point in the examination asked questions about the totals in the net worth statements starting with 1945 and 1946 and so on, and the very large increases.

You should keep in mind that those net worth statements show the value of Mr. Forster's interest in these various separate corporations. That value increased very greatly during these years, but that was not taxable income to Mr. Forster. The income tax of that was paid by these corporations and it simply represents the increase of the value of the stock that he held in those companies, so that want to make sure you are clear on that, that that had nothing to do with Mr. Forster's own personal income, or his separate assets.

Now, there is one other matter that I would like to mention this morning, and a couple of other [5330] matters. One is the Denny Regrade property that was sold to Mr. Morris.

You will recall that Mr. Morris had sold the Daisy Ice Cream to Mr. Forster, and there was a note payable by Mr. Forster to Mr. Morris when this was sold.

Both Mr. Forster and Mr. Taylor testified that they remembered the sale price was $14,500. It appears in the testimony that there was $15,500 credit

on this note of Mr. Morris, and that there was a $15,500 receipt on this property which apparently was never delivered since the original was found in Mr. Taylor's files.

Now, Taylor says he believe that the sales price was $14,500 and that there was a $1,000 adjustment on the note.

The deed, however, apparently carried stamp taxes based on $15,500, but interestingly enough, in Mr. Taylor's own computation on the note, the stamp taxes are set out at a lesser amount, and Taylor did not buy or affix the stamp taxes on the deed.

Now, I don't know what the fact is, except that obviously there was confusion in the minds of Mr. Forster and Taylor as to what the price was. Mr. Griffin, I think, perhaps left the impression that the [5331] one thousand dollars never got to Mr. Forster, but there was a deposit shown in the evidence in account 198, his savings account, representing all the cash that was paid at the closing of the transaction after crediting the amount of Mr. Morris's note, and that accounted for all of this transaction, including the one thousand dollar adjustment, if there was an adjustment, and the $14,500, except for the five hundred dollar down payment, which was a separate item, and which Mr. Taylor said went to Mr. Forster separately.

Now, this transaction occurred in January or February, and the income tax return reflecting it, of course, was not filed until March 15th, of the following year, 12 or 13 months later.

The transaction was carefully set out in the income tax return in all details except that the amount was $14,500. Now, maybe there was a mistake. Maybe there was a one thousand dollar mistake. Maybe the price was $14,500 and there was an adjustment of one thousand dollars.

I don't know, but at least there was nothing in that transaction that would indicate any intent to evade taxes. And the most it would indicate is for some reason Mr. Taylor, and Mr. [5332] Forster also, had the impression that stuck with them that the price was $14,500 and that at most there would be a mistake of one thousand dollars, the same thing that was very carefully set out and reported on the return.

There is another point that I wish to revert to briefly. During Mr. Taylor's cross examination by Mr. Keesling, Mr. Keesling had identified five or six adding machine tapes of the kind given to Mr. Taylor at the end of the month. These had income taxes on them which had been paid by Alpine Dairy —these were Alpine Dairy tapes—on Mr. Forster's personal income tax, and Mr. Keesling sought to show that the account numbers written besides these amounts were business accounts for the business taxes of Alpine Dairy, 32 and by an account 33, I think, but the tapes show that written in English language besides these amounts are the words "Income Taxes," and Mr. Taylor told you that each of these items had a descriptive word and that is what he went by, and as Mr. Forster's income taxes, they were chargeable to his proprietorship account,

where they were charged on Mr. Taylor's ledger.

There was nothing in there to indicate to Mr. Taylor, of course, that there were large amounts [5333] of personal items of Mr. Forster buried in the plant expense and advertising and in the other business expense items.

While discussing particular issues in this case, I pointed out a large number of discrepancies and contradictions in the testimony of Mr. Forster and Mr. Erickson that we submit indicate that their testimony against Mr. Taylor is not credible, and there are others which I haven't previously mentioned.

For instance, Mr. Forster's testimony that he never instructed his bookkeeping staff with regard to any entries in the books is directly contradicted by Miss Neukirchen's testimony that if Erickson wasn't there, she would ask Mr. Forster where to post matters in the books.

Also, directly contradicting Forster's testimony in that regard is Miss Neukirchen's testimony that Forster instructed her not to record the ice cream sales and the sales of mix at Renton, and instructed her to keep the invoices and give them to him. Moreover, with regard to Daisy Ice Cream, you will recall Forster said he thought Taylor was the one handling the books, and he didn't learn anything to the contrary until after the investigation started and yet later he admitted that he had Erickson make out [5334] profit and loss statements for Daisy and Alpine for year after year during this period.

On the Government's cross-examination, Forster testified that he had discussed with Taylor the matter of his daughter's continuing on the payroll while she was in Europe and yet there was read to you Mr. Forster's sworn statement to the Agents that he did not discuss this with Taylor. Direct contradiction.

And with regard to Mr. Erickson, I must say to you Ladies and Gentlemen that I have a great sympathy for Mr. Erickson and I think every one of you do, too. He had a large family to support and he had to have a continuous job, and he had to keep that job.

He was, and he obviously still is, under the domination of Forster, and one can only think that everything he did in this case was under the direct order of Mr. Forster, and he had to keep his job, and he still is indebted to Mr. Forster, and he still has the problem of keeping a job and supporting his family when he leaves here, no matter what happens to him, but that, Ladies and Gentlemen, may explain why he would take the stand, but it does not excuse why he would take the stand and obviously not tell you the truth. He, too, has contradicted himself and contradicted it on previous testimony. [5335] I mentioned some items before, and there are others. He testified here that the girls in the office were not working under his direction, and yet all three of them, Audrey Favini, Caroline Neukirchen, and Helen Krall, all took the stand and told you they worked under Erickson and under Erickson's instructions.

Mr. Eppler testified that Erickson himself had told Mr. Eppler that he was in charge of the office and gave the instructions to the girl, and in this connection, Mr. Erickson testified as to a lot of checks coming in. He said that he gave them to the girls to post in the ordinary course of business, and he said he didn't know why they were not posted, and he did not know why they ended up in Forster's savings account.

For example, the Finstad and Utgard checks, he said they were given to Miss Neukirchen to post to accounts receivable, and to deposit in the company account, and he said he didn't know why she would have put them on Forster's desk, and the Stephenson butter checks, he said he placed them on the counter, and the girl picked them up and he said she should have posted them.

He said he had nothing to do with the [5336] posting of accounts receivable, and that he gave no instructions, and that he wasn't necessarily in charge of the entries in the sales record, and yet there was read to you Erickson's sworn statements to the Agents, and he told the agents that the recording of receipts was under his supervision and no one else had authority over recording of business receipts except himself, and Miss Neukirchen testified that the only reason that the Stephenson checks would not have been recorded would be that she had not received them, and she gave the same testimony on the casein sales, and Miss Neukirchen told you that she got instructions from both Forster and Erickson not to post the charge slips to ac-

counts receivable and to hold out the cash sales.

And, again, with regard to Daisy, Erickson testified that he didn't know why the Daisy cash sales were not recorded on the Issaquah books. Miss Neukirchen testified that she withheld those Daisy cash slips on Mr. Erickson's instruction, and Erickson's statements to the Agent, as read to you, were that he charged the personal expenses to business expense because there was no other provision on the books for charging personal items to Mr. Forster.

But, when it became apparent here that there was provision on the books for such charges, it [5337] also became apparent that Erickson himself had made such charges previously, and he shifted his ground and testified that the reason he charged personal expenses to business expense was that it didn't make any difference to him whether the item was business or was personal, it was all Hans's business, all Hans's business, so he charged the item to the same account that he would have charged the business expense to.

Similarly, as to business receipts coming into Issaquah, which were put into account 198, Erickson said to the Agent that he had no place on his books for these items, but at this trial when it became apparent that there was a place on the books, then he shifted again and said that some of the checks didn't belong to Issaquah at all, and as to the others it was simply the simplest way of disposing of them.

No one, I submit, who had heard his testimony and heard these contradictions—knew and so heard

that testimony without knowing that he was not telling the truth and the whole truth and was making effort to protect Mr. Forster.

It is reasonable then to conclude that his testimony against Taylor is likewise suspect in view of the campaign that Forster has made to throw the blame in this case onto Mr. Taylor. [5338]

Many strange situations are testified to in this case, all resulting in income to Mr. Forster, and the receipt of this income is always a great surprise to Mr. Forster. People are busy getting business receipts into his hands without recording them, splitting their salary checks with him, charging his personal expenses to business expense, reducing by fifty thousand dollars his taxable income after he raised a fuss about it; all, we are told, on their own initiative, without being asked, without telling Forster, and it is all a great surprise to Mr. Forster.

Christmas came every day at Issaquah. One would almost think that Mr. Forster would be a very retiring and bashful man, unused to business affairs, who never did understand how money was earned, or how it came to people, or whether he earned any money at all in a particular year.

Instead, we find him to be a very dominant character, a profuse and glib talker, and a man who could and did compute a profit and loss statement each month in his head.

In the business world, large amounts of income just don't happen. Large checks don't just come to you out of the sky like manna from Heaven. Your

employes on their own initiative don't alter books, and risk a [5339] term in the penitentiary just to save you taxes because you are a wonderful guy, and they further do these things without telling you so that you will be agreeably surprised how wealthy you become. People just don't do things that way.

Now, the explanation of all these facts that makes any sense at all was that Forster was ordering and directing that these things be done. He ordered Miss Neukirchen and Erickson to give him the checks, and cash without recording them. He ordered Erickson to charge personal expenses to business expense, and to reduce profit at the end of the year 1949 and he arranged with Baskett and Schneider to get part of their salary checks.

It has been claimed that Mr. Taylor was the master mind in all this. I submit to you that the master mind was none other than the same master mind that built up in a few years a large business chain from nothing, and that could compute profit and loss in his own head, and when we talk about friendship and trust and reliance on an accountant, let us think about the obligation of a business man and taxpayer to give his accountant fully and completely all information for his returns, and to see to it that every item of income is entered [5340] on his books, so that when the accountant takes the figures from the books, relying thereon, he will have received correct and complete figures.

And then, when we speak of friendship and trust, let us think also of the obligation of this business-

man and taxpayer to take the stand and tell the truth when his unreported income has brought not only himself but his employes as well to trial, to tell the truth so that those who have served him for years at ordinary if not low compensation can be judged on the basis of the facts as they actually existed.

Now we recognize, Ladies and Gentlemen, that the worst thing here as far as Mr. Taylor is concerned is not the evidence in this case but the fact that he had previously plead guilty to tax evasion in his own case but we say to you that if there is anything that we in this Country stand for it is that everyone is entitled to fair play, even those who have erred previously and who are weak and down trod, they also as well as the successful and rich and powerful have the right to be judged impartially on the facts in the case.

Now, on his own return, Mr. Taylor although he felt in his own heart that he had not intentionally evaded [5341] taxes, pled guilty on the advice that he was responsible, that as an accountant he had no defense. He stood up like a man and paid for his mistake. He did not deny the facts relating to his own situation and there is nothing in his plea of guilty to indicate that when he is testifying under oath he would do other than to state the facts truthfully and correctly as they occurred. In fact, his testimony in this case, as you saw, Ladies and Gentlemen, was direct and it was frank.

Mr. Griffin said something about character witnesses, about one character witness being asked

about reputation during the period 1945 to 1949. Of course, that is what we asked him. That is the period when it is charged these events took place. Mr. Griffin forgets that his own associate, Mr. Brody, asked Forster's character witnesses precisely the same question, and as Malcolm McLaren, a labor leader and civic leader in this City told you, Mr. Taylor's plea of guilty in his own case has not changed his opinion as to Taylor's truthfulness and veracity. Just because Taylor pled guilty in his own case doesn't justify his being made the scapegoat for someone else's tax delinquencies. The very fact he had this prior trouble makes it imperative [5342] that you Members of the Jury carefully examine the evidence and the credibility of witnesses in this case because of the vulnerability of a person in his situation being charged with another's troubles and this responsibility that you as jurors bear is particularly emphasized in this case by the fact that Forster's defense has not been a frank, straight answering of the Government's charges but has consisted almost entirely of an attack on Mr. Taylor, on matters having nothing to do whatsoever with the Government's charges.

These are the tactics, of course, that a person would employ if he were improperly seeking to blame another for his troubles. He would avoid talking about the actual issues and would concentrate on discrediting his victim and that is exactly the line that Forster's defense has taken here.

Moreover, it is evident from the testimony that this defense of blaming Taylor is based not on a

conscientious consideration of what actually happened but on the fact that Taylor was vulnerable, a person on whom the blame could be thrown.

April 16, 1950, it had its inception at a time when the investigation of Forster had not yet started and it was not known anything was wrong [5343] with the Forster returns. In the very first meeting with the Agents on this Forster case on April 26, 1950, Mr. Kachlein, who was attorney for both Forster and Taylor, stated to Revenue Agent Marx that if there were any errors in the Forster returns it was undoubtedly due to the sloppy accounting of Taylor. Now, Kachlein says he doesn't remember this but he does not deny it and Marx in so testifying was testifying from a written memorandum made at the time. By Mr. Kachlein's own admission he did not then know that there was anything wrong with Forster's returns. Why then would he suggest to the Agents that another client of his, Mr. Taylor, was responsible for any shortages if they were found? Obviously at that point he did not know truthfully who might actually be responsible for the shortages if they were found. The only possible reason for this statement was to lay the ground work for shifting the responsibility for any shortage that might develop—shifting the responsibility from Forster to Taylor—irrespective of the actual responsibility that might be developed by the facts.

Mr. Kachlein admits that on August 29, 1950, when from Mr. Eppler's entry into the case he knew there was a question of fraud involved he [5344] nevertheless told the heads of the Internal Revenue

Office here in Seattle that the substantial deficiency shown by the Touche-Niven reports was all due to the faulty, sloppy, poor accounting work of Taylor and told them that Mr. Taylor had the responsibility of looking after all of Mr. Forster's books and all the finances of Mr. Forster's enterprises and yet, even at this time, Mr. Kachlein, according to his own testimony, did not know the details of the possible deficiencies as to whose fault it was. He says he didn't know that until the end of October, 1950. I wonder with the evidence in this case on just what he did base his conclusions even then.

Now, again, these statements to the Agents indicated a plan and purpose of basing the defense of Forster on an attempt to shift the blame to Taylor irrespective of the actual facts of the case. Now, furthermore, Mr. Kachlein, during all this period when he was making these statements, was actively representing Mr. Taylor as his attorney. He at no time advised Taylor that he was taking a position that Taylor was to blame for Forster's tax deficiencies, and, furthermore, after a phone call from Forster he blocked the circulation of a petition which would have strengthened Mr. Taylor [5345] before the Accounting Board.

Now, I say to you that all of this was a very unfair procedure with a lawyer to take with his own client, that it was extremely unfair for a lawyer who has persuaded his client to plead guilty to a criminal charge to turn right around and use that very guilty plea as a basis for making him the scapegoat for another's tax deficiencies.

Now, if Mr. Forster and Mr. Kachlein had had confidence that the facts as they developed would exonerate Mr. Forster then there would have been no reason for treating Taylor unfairly; there would have been no reason for Kachlein to blame Taylor on the one hand while still representing him on the other and at a time before Kachlein knew what the facts were; there would have been no reason to prevent Taylor's clients from expressing their confidence in him; there would have been no reason to encourage Taylor to leave town for a month in September, 1950, without telling him that the lawyer he trusted and still relied on was actively working against him; there would have been no reason to leave Taylor, in practical effect, without an attorney's protecting his interest during the first six months of the investigation in this case. [5346]

If Mr. Kachlein, on April 26, 1950, realized as he should have the conflict involved in blaming Mr. Taylor for Mr. Forster's troubles, blaming the man who is now in prison and who is most vulnerable because of Mr. Kachlein's own advice, if he had even notified Mr. Taylor at that time so that Mr. Taylor could have employed other counsel Taylor might be in a much better position today to defend himself against the attack by Forster because on April 26, 1950, Taylor's files were still complete as he left them at Issaquah. By October 27, 1950, they had been taken apart and scattered and never again would get into a condition where all of the papers relating to various transactions could be put together.

The fact that all of this was done before the facts shown by the investigation had been uncovered is evidence that Forster and Kachlein did not have confidence in the truth of Forster's position and desired to plant in the Agents' minds at the very outset the idea that Taylor was the man responsible.

Now, these representations against Taylor and the statements by Forster against Taylor which followed them all occurred before any recommendation of prosecution was made by the Government [5347] Agents in this case. And what were the Government Agents to do? Here was not only Forster but Taylor's own prior attorney saying that Taylor was responsible. Their only course, as conscientious public servants, was to indict both of them along with Mr. Erickson and let you, the jury, decide who was to blame and that is now your responsibility, Ladies and Gentlemen.

To have pled guilty in his own case and gone to prison was not easy on Mr. Taylor, particularly where he insisted that there was no intent to evade, but he was told for an accountant there was no defense. You saw tragically while he was on the stand the genuine anguish of a man required to relive that episode. Nor was it easy for Mr. Taylor to learn that the very day after the prison doors closed on him his trusted attorney on whom he had implicitly relied and on whose advice he had pled guilty was imputing to him the blame for someone else's tax deficiencies, an imputation obviously based on the very plea of guilty which that attorney had recommended.

Now, I am asking you to re-examine Mr. Taylor's own case. Whether what happened was right or wrong it is not your burden to decide and [5348] it is not an issue here but I am asking you not to punish Taylor twice for the same matter. I am asking you to determine the case before you on its own merits, without prejudice from what happened before. You have only this case before you and I am asking that justice be done in it on the facts which apply to it and it alone.

The Court will instruct you that Mr. Taylor is not guilty in this case unless you find beyond any reasonable doubt that he knew there was not included in these returns income which was required to be included and that he personally and with an evil motive intended to evade taxes thereon when he filed those returns, and the only evidence, Ladies and Gentlemen, in this case that would serve to show such intent by Mr. Taylor is the unsupported oral testimony of Forster and Erickson and under all the circumstances here we say to you that their testimony against Mr. Taylor can not be believed and it certainly can not be believed beyond any reasonable doubt. As conscientious citizens interested in fair play and considering the evidence in this case your verdict as to Mr. Taylor should be not guilty.

Thank you. [5349]

* * * * *

Mr. Griffin: The Defendant Forster at this time moves that the cause be reopened for the taking of additional testimony, and the introduction and the

offer again of exhibits A-121 and A-121-A; that because of the argument primarily made by Mr. LeSourd in regard to minus inventory, and the purpose of that exhibit as well as the offer of Exhibit 120 was to meet that particular argument, and with those exhibits in evidence, the argument would fall of its own weight. It leaves the case, as far as the Jury is concerned, with Mr. Taylor's statement as to minus inventory when he carried the minus inventory over from 1949 into 1950, and showed it only by a hyphen mark on Exhibit A-121-A, and in exhibit A-121 [5367] he didn't show it at all on a profit and loss statement. You had to deduce it by a matter of addition and subtraction.

The Court refused the testimony on rebuttal to the testimony of Mr. Taylor by Mr. Egeness, and that rebuttal testimony was to meet the testimony of Mr. Taylor specifically in regard to Finstad and Utgard—Mr. Egeness—and it left the testimony of Mr. Taylor then open, unimpeached, and the argument was therefore made on Mr. Taylor's behalf by Mr. LeSourd as to the Finstad and Utgard situation, and the Egeness situation in the purchase and sale and the salary checks and payment of taxes.

The Court refused the testimony on rebuttal of Mr. Ellis, the credit manager, of Peoples National Bank, of Mr. Strack and Mr. Donaldson, as to the purpose and effect of a financial statement, what the credit department desired, and what was represented to them, leaving the testimony of Mr. Taylor unimpeached, as to what the credit department wanted, and the purpose of making of credit profit

and loss balance sheets for the credit at a bank, which was used and unimpeached, Mr. Taylor's testimony standing alone in that particular. Mr. Egeness's testimony also going to the matter of the bonus payments, and Mr. [5368] LeSourd argued to the Jury that the $10,000 was properly allocated, when the rebuttal testimony of Mr. Egeness would show that the bonus payments were limited to those on the statement and there was a differential of between seventy-five hundred and eight thousand dollars, however, leaving Mr. Taylor's counsel free to argue that the ten thousand dollars was properly allocated under the evidence of Mr. Taylor.

Will your Honor excuse me just a moment?

(Whereupon, there was a brief pause.)

Mr. Griffin: (Continuing) The Court did not permit the testimony of Mr. Egeness in impeachment of Mr. Taylor as to Exhibit A-44, Mr. Taylor having testified that three changes in that document were made by Mr. Egeness, and the specific question asked of Mr. Egeness was refused by the Court, and we deem that those matters were vital in the defense of Mr. Forster as against Mr. Taylor's claim, and would affect the over-all defense of Mr. Forster as to the Government's claim.

I think that completes it, if the Court please.

The Court: Any comment of other counsel?

Mr. LeSourd: We object, of course, on [5369] the same grounds before, on the grounds it was not timely offered.

Mr. Moriarty: The Government objects on the same grounds.

The Court: Motion will be denied. [5370]

* * * * *

Mr. Moriarty: May it please the Court, Ladies and Gentlemen of the Jury:

It has been called to my attention that during the argument, that I made a statement that Mr. Griffin had cross-examined Mr. Eppler for a period of seven days. I wish to withdraw that statement, because it is not the fact. Mr. Griffin did examine him on parts of two days, and completed his examination, but Mr. Eppler was here for a given number of days and if I may be guilty of any misstatement, it is by the tender mercies of inaccuracy of memory. I do not intentionally make any misstatement of fact.

Mr. Griffin in his argument has accused me of stating that there were some "characters" who testified, and my designation offended him. I am afraid Mr. Griffin has not been in contact with the dictionary for some time, for that states an individual possessing a combination of distinctive features of high worth and moral force and also one of resolution.

He also indicated we were endeavoring to convict a rich man only because he was a rich man. [5491]

The United States Attorney herewith serves notice on Mr. Griffin, upon every individual in the district, that any one who violates the law, be he rich, be he powerful, or high placed, is not above the law or beyond it.

We heard much about the suggestions and the gift of imagination that Mr. Eppler and the United

States Attorney possess. We were warned about the Police State; we were told in Mr. Griffin's argument that every item of personal expense was charged to business expense on the books. There were many places that those personal expenses were found, in supplies, advertising, plant expense, and so on, and they couldn't be found unless somebody went out looking for them, and they weren't found for many years by a revenue agent and it took about six months for their own accountants to finally get it together, but a strange thing appeared in the evidence and I hope my memory serves me right, that when Mr. Eppler asked Mr. Erickson for a list of those expenses when he was under investigation, it was promptly and quickly complied with.

We were told about the two dollar Community Fund check and we were given the five facets. The Time Oil Company was explained by Mr. Griffin's [5492] imagination as used to prevent other oil companies knowing that the Time Oil Company was doing something unethical. We are not interested in that, but ask the Jury to consider how the other Oil Companies could check the books of the Issaquah Creamery Company if such had been recorded on the books of the Issaquah Creamery Company, and the Issaquah Creamery Company would not let them check the books.

We heard again and again that every check in the journal was recorded, and every check was in the journal, but something had been done to detour it to something that wasn't Mr. Forster.

We heard about Account 198 being available to

Mrs. Forster, but at the time she wanted the Cadillac Automobile, she didn't go to 198. She went down to Mr. Erickson while Mr. Forster was in Switzerland, and Mr. Erickson graciously complied with it, and if that is not the best evidence of a plan, I don't know of any other. "Charge everything on the books, but charge nothing to me." Those were the orders, and they were slavishly complied with. Every check was entered in the journal, but somehow charged to something else but Mr. Forster.

Mr. Forster eliminating his competitors and putting them out of their misery was confusing himself [5493] by mixing up in account 198 funds that belonged to the Hans Forster Transportation Company, the Issaquah Creamery Company, and Alpine and Apex.

Then, Mr. Griffin recited all of the witnesses for the Government, including Carline Neukirchen, and he dramatically read to you one instruction about the selection of an accountant.

I ask you to pay close attention to the instructions of the Court upon that feature. Dramatically Mr. Griffin made a demonstration about his chair, and dogmatically announced that you couldn't make a chair disappear. Therefore, minus inventory was eliminated.

I say to Mr. Griffin, if you really wanted to juggle books, you could have a minus chair just as easily as you could have minus cash, if that was part of a plan, to defraud the Government. Magnificent words were used about taxes and military taxes, and Hans

Forster dealing with himself, and Mrs. Wilcox carefully keeping the cash. Remember they had a cute deal. Down in Seattle was where they took it in and very carefully, and it was only in the little world at Issaquah that it was diverted, and where there were two people all the time, every day, Hans Forster and Harold Erickson. [5494]

Then Mr. Griffin went into a dramatic charge, answering only one of the questions that I addressed in the opening argument, and that was about Mr. Jones. Mr. Griffin reminds me that Mr. Jones was a witness subpoenaed by the Government.

That did not keep Mr. Griffin from bringing back every witness that he wanted to that was subpoenaed by the Government, and that explanation of failing to call Mr. Jones falls flat on its face.

Then, in his argument, Mr. Griffin began to Taylorize the defense, and he charged Taylor with the duties of a memory expert, when we can only charge him with the ability of a Houdini.

It was a Taylor-made defense. He had proved the Government's case, and then he criticized that Mr. Gorans had not been inquired into further. We ended the Government's case in chief on March 16, 1954. We are still in the trial and we have been listening mostly to minus explanations of fog and inaccuracies of Mr. Taylor's bookkeeping accounts. I want the Jury to well remember that the Government bases its case principally on the items that never saw the books, on the checks that were written, falsely entered as business expense, and no matter how many internal safeguards, or how much the

Touche, [5495] Niven, Bailey and Smart accountants could set up, if somebody detoured with the money they couldn't have any record of it any more than Hicks Taylor could have.

In the closing of Mr. Griffin's argument, he closed that session on an afternoon with the explanation about Taylor and about the barn, and that Taylor should have known about the barn. It was apparent that Mr. Griffin expected that Mr. Taylor—not Mr. Forster—was expected to milk the cows, clean out the barn, rent the farm, and collect the rent, and know everything about it, including income tax, only having been there once at the barn dance.

Apply the same measure of expectation of recollection to Mr. Forster. We heard again a suggestion about a Swiss Cheese deposit in a sarcastic way. I am not unwilling to answer the explanation and inquire of the Jury whether it is not possible under this evidence to think that in some parts of Switzerland, there may be some deposits not in rolls of Swiss Cheese, but in Swiss deposit boxes.

Then we heard of Erickson's great limitations. Forster carries the matter here. I am willing to answer that part of Mr. Griffin's argument. He carried it well, and he carried it [5496] without the assitance of any books, and unless somebody was watching him every minute, nobody could tell how much money he had at any time. Mr. Griffin said he was calling no names, and to pay no attention to the accountants, and Mr. Gorans, who has remained here, through the arguments, at sixty dollars per day, for the sole purpose of giving Mr. Griffin the

memorandum he carefully read with difficulty—distraction for seventy thousand dollars and a slight memorandum.

The Government is charged with attempting to aid Taylor. I know by this time in this argument that that argument has disappeared.

Mr. Griffin then spoke about Bill Allen at Boeing's who never saw the books, but I pose this question:

If the bookkeeping department at Boeing's put a check for the sale of supposedly 29 cents on Bill Allen's at Boeing's, or Bill Street's at Frederick & Nelson's a check for used furniture, we don't think either one would put the check in their personal savings account and loan it back to Frederick & Nelson's or Boeing's at six per cent.

Mr. Griffin suggested you take a paper and pencil for the proper showing of forty thousand and fifty thousand dollar shift from Issaquah Creamery [5497] Company to the individual ownership of Alpine Dairy in 1948 and 1949. He has pointed out that the corporate tax for both years was 38 percent and on ninety thousand, the total for both years, which he admits the corporation did not pay.

He failed to point out, however, that in 1948 that more than 56,000 was omitted from Alpine, and Mr. Forster's personal tax returns, so that instead of paying 59 percent or 21 percent more tax on the fifty thousand dollars, he didn't pay a cent on it, either personally or in the form of corporate tax, and that in 1949, the evidence shows that more than $79,000 was omitted from Mr. Forster's personal

tax returns, so that instead of paying 65 percent or 27 percent more on the forty thousand dollars, he didn't pay a cent on that tax, either, and that actually the full ninety thousand dollars was taxable to the corporation as well as taxable to Hans Forster personally and neither paid one penny on it.

To keep within the limitations of my time, I leave Mr. Griffin's argument for the moment.

Mr. Keesling in his defense of Mr. Erickson has adopted a rather unique approach, and I said in my opening that he had taken Mr. Griffin's advice and he was pounding the other lawyer. So, if my [5498] memory serves me correctly, Mr. Keesling described to you the reasons why these people could not be tax evaders.

I will try to recall them.

(1) There must be an intentional failure to maintain any financial records whatever.

(2) That the tax evader must have frequently visited safety deposit boxes at least under an assumed name.

(3) The tax evader must deal in large sums of currency, never in checks.

(4) The tax evader must purchase property under assumed names.

(5) The tax evader must be a racketeer.

(6) The tax evader must not be able to pay the taxes when apprehended. He must have lost the money at the race track or by some other means. Mr. Keesling has been reading too many detective stories. What he described to you is not the defense of tax evasion as described in the Code, but the

perfect crime of tax evasion. He tells you, in effect, that a crime, in order to [5499] be a crime, must be a perfect crime.

Now, the Court will instruct you concerning the elements of the crime of tax evasion, and in all due deference to Mr. Keesling, I am confident that the Court's charge will not include any of the elements mentioned by Mr. Keesling.

However, for a moment, I would like to discuss these elements and see whether they might be applicable to this case in view of the question asked me whether it is possible to explain why the Government's proof fails to measure up to Mr. Keesling's specifications.

First, Mr. Keesling says there must be an intentional failure to maintain any records. I must confess there are records in this case. However, attached to Exhibit 238, is a list of over $100,000 of business receipts received by the Issaquah Creamery Company and not recorded on the books of that corporation that are in evidence. There are other entries concerning these receipts in the books of the corporation. There is evidence that Hans Forster conducted large scale business known as the Daisy Ice Cream Company. Few, if any, records of this corporation have been found. Therefore, I submit, at least we have partially satisfied [5500] the first of Mr. Keesling's requirements.

Second, Mr. Keesling tells us that there must be a frequently visited safety deposit box rented under an assumed name.

Now, there are many banks in the State of Wash-

ington. There are many more banks in the United States, and there are banks, in fact, in foreign countries. It is probable that there are considerable numbers of banks even in the small country of Switzerland. There are also assumed names without end which a person might use. There may be several safety deposit boxes kept under assumed names in this case, but the Government must admit that if there are, we have been unable to locate them, so I guess we must admit failure to satisfy Mr. Keesling's second requirement.

Third, Mr. Keesling suggests that there must be use of large sums of currency. If you will examine 198, you will find many thousands of dollars of currency deposited in that account. You will recall the testimony of Caroline Neukirchen of the currency collected from the drivers, and Mr. Green's Time Oil payments, were made in currency, so that I believe we can satisfy Mr. Keesling's requirements on that part. [5501]

Fourth, there must be purchase of property under an assumed name. Presumably a person who has no desire to own property could not qualify as a tax evader. As in the case of safety deposit boxes under assumed names, the Government must confess its inability to locate property which Hans Forster acquired under assumed names.

This does not, of course, mean that such property does not exist.

However, we have located and have put in evidence $300 a month paid to Mary Finstad on Hans Forster's account which was carried on the books

of Finstad and Utgard under the name of Verne Egeness. We have sums of money paid to Hans Forster from the Renton Ice and Ice Cream Company carried under the names of Maizie Baskett and R. L. Schneider. We have sums of money paid to Mr. Forster by Simonson and Forster, carried under the name "equipment" but I do not suppose these facts satisfy Mr. Keesling's requirements.

Mr. Keesling says that the taxpayer must be a racketeer. What constitutes a racketeer depends upon one's definition of the term. It is what racket one is in. I do not believe we could call Mr. Forster a racketeer. Unfortunately, there are not [5502] enough racketeers in America to support the Government by taxes. Moreover, as I have read the newspapers, and I have, the racketeers are very poor taxpayers, so the Government has found it necessary to collect taxes from people other than racketeers.

Sixth, Mr. Keesling tells you that in order to qualify as a tax evader, a person must be able to pay the proper amount of taxes due when the fraud is discovered. This would make the Court and Jury some sort of a collection agency. All an individual would have to do when discovered in wrongdoing would be to say "I will pay up". Presumably the individual who robs a bank and being captured could be completely exonerated by offering to return the funds which he has stolen from the bank, —and these funds were stolen from your Government. Such is not the law.

The Court will tell you that this is a criminal

case, and whether Mr. Forster has paid or will pay, or can pay, taxes due in this case is no concern to the Jury. The people who can pay their tax liabilities when discovered, and the people who for various reasons find it impossible to pay these taxes, stand on exactly the same footing.

Mr. Keesling has told you that Mr. *Keesling* made out checks in question in accordance with the bills received and determined the account, whether the [5503] check should be drawn on the Alpine or the Issaquah account.

Now, I ask you for a complete answer to that statement to look at Exhibit 64, the cancelled checks in the amount of $5,744.22, payable to the Puget Sound Products Company in payment, if we are to believe the books, for the purchase of butter. Examine these exhibits and you will find no bill from the Puget Sound Products Company. You will perhaps recall the testimony of Mr. Goss, the vice-president of the company. Mr. Goss told you that the Puget Sound Products Company did not sell butter, that he had never received a check, and that the endorsement on the back he couldn't recognize, and the Issaquah Creamery Company never owed Puget Sound Products Company any money. That is what Mr. Erickson did on one cold occasion of handing to 198 $5,744.22 of taxfree money and a deduction on top of it.

Mr. Keesling has commented at some length that neither Harold Erickson nor L. Hicks Taylor would state he did what he did because Forster directed him to do it. He tells us that if they had willingly

made that statement, they would have been completely exculpated from wrongdoing. The fact is that had either Taylor or Erickson made such a statement, it [5504] would have been tantamount to admitting they were guilty of aiding and abetting Hans Forster in his tax evasion. It would be refreshing to hear such a frank statement from the witness stand, but human nature being what it is, we do not find defendants in criminal cases entering pleas of "not guilty" and then taking the witness stand and then confessing their guilt.

Mr. Kessling, in great oratory, reminded us that the Hammer and Sickle is not flying over the courthouse yet. I daresay such a reminder was necessary. I suspect, if Mr. Forster and people who assisted him, had been accused by the Government of Soviet Russia of not bearing their fair share of the Government's effort, particularly during the war years, a four months' trial before a jury would not have been required to dispose of the matter.

The matter would have been disposed of very briefly and the defendants would have enjoyed none of the rights which have been observed in this courtroom.

However, for the fact that the Hammer and Sickle is not flying over the courthouse, we are in no ways indebted to the principal defendants; in order that we may all continue to enjoy the rights of freedom which the defendants have enjoyed, we must [5505] maintain a strong national defense, and that requires large sums of money and unfortunately, there is no way to raise this money ex-

cept by taxes—taxes—taxes. Taxes are the lifeblood of your national defense, and unless we want to have another flag flying over this Country, we must enforce our tax laws.

Now, as I approach my conclusion in this matter, I have boiled down in a few pages what I think the evidence shows over all with all the contributions that have come from the unwilling lips of the witnesses, from the lips of defendants, and from the records in the four months almost that you have spent here.

The planning Forster had the plan to expand, gain more business, and from each, get income concealed for taxes. First, you have an Egeness. He gets his profit—his salary—and no objection is made by him of taking a part in the concealed kickback. Where you have a Schneider, he gets his, and the kickback through a concealed plan to Forster via not only endorsed checks but then to make it more perfect, by cashier's checks at another bank. And Taylor supervised all these affairs, plus additional changes of inventory at Finstad and Utgard and [5506] at Renton. Where you have an honest Keck at Apex, the money is removed through legitimate checks, sidetracked at Issaquah by Erickson and Forster to account 198. Where you have an honest Wilcox at Alpine, the company removed, through fictitious expenses and diverted checks at the Issaquah Creamery by Erickson and Forster to account 198. Where you have an Erickson you do all these things, divert checks, fictitious expenses, hold out sales cash and checks, have the alterations of the

books and records. And, where you have a Taylor, you have an overseer field general and the supervisor of all these operations. And, where you have a Forster, you have an empire builder and tax evader expanding through scheme after scheme, acquiring business after business, putting competitor after competitor out of misery, profiting in every venture he entered by concealing from the authorities of his adopted Country taxes due and owing from these profits.

Was there an attempt to conceal? Look there for this consistent pattern in the several companies comprising the Forster empire—Simonson and Forster, Incorporated, Hans Forster received a salary of $100 a month for in excess of two years, and I wish to adopt Mr. LeSourd's statement. The [5507] checks were not charged on the books to salary, but were by some strange coincidence charged to general expenses without any withholding tax being deducted from Forster's salary, and no withholding or wage statement being furnished to the Government.

Finstad and Utgard monthly payments of $300 per month were made to Mrs. Finstad by Finstad and Utgard check. These payments were made on behalf of Hans Forster. The books show these payments as charged to Egeness with no records commenting or indication of any kind that these payments were made on behalf of Forster to pay for the Finstad and Utgard stock. Of course, the Government was not, by some strange coincidence, informed of these payments, and was able to learn

of it only after an extensive investigation was begun and commenced with the Forster enterprises.

The Renton Ice and Ice Cream Company — in some ways, this commands a grudging analysis. It was this company that near perfection was reached. In this instance, there was an agreed three-way split of Forster's salary between Baskett, Schneider and Forster. But, how were the salaries shown on the books? As salary only to Baskett and Schneider. In fact, the plan went so far to even eliminate the [5508] name of Forster on the checks paid to him.

These checks were in some instances issued in the names of Baskett and Schneider, and endorsed over to Forster. In another instance, not even company checks were issued, but bank's cashier's checks were purchased and forwarded to Forster to completely hide and conceal Forster's name and the fact that he was receiving income from this company. Here was the supreme effort and attempt to conceal.

Alpine Dairy, and the Issaquah Creamery Company: On the Alpine Dairy books, you have been shown check after check written for Forster's personal expenses, and charged on the books as business expense. No mention was made, no notation was shown on the books that these were Hans Forster's personal expenses. Erickson has attempted to explain that he gave it no thought. Special Agent Eppler testified that the person looking at the check register, or even the checks, or the check stubs, would not be able to tell whether a check had been

issued for personal expenses, and under normal circumstances, who would be expected to question and examine hundreds of the checks issued by this company with the specific purpose of finding personal checks charged to business.

The very same pattern of concealing personal [5509] expenses was devised and used on the Issaquah Creamery Company's books. In addition, a much greater concealment was perpetrated in the form of the diverted Issaquah sales receipts. There was another masterful stroke, or at least, it was thought to be; here were sales receipts not recorded on the books. What better way could there be to conceal something than to have no record at all of the receipts?

But, the grand plan went even further to the point of destroying the invoices and the bills which might leave a trail of cash sales. The only thing that was forgotten in this grand plan of concealment for tax evasion was what to do to hide account 198?

Here was the one thing they couldn't conceal, destroy, or throw away, and still reap the harvest or the benefits of tax evasion, and certainly this account 198 is the one thing standing alone, now fully exposed, that spotlights and completely illuminates their attempt to avoid taxes.

I have not referred to an exhibit but to direct your attention to an exhibit there is an exhibit that was placed in evidence that is most important in my opinion in your deliberation for what [5510] is not on it, rather than what is on it. This Exhibit,

A-142, was put into evidence during the side show about the Kachlein episode, in which we have at all times and do now disavow any connection with and have no part in, but it came in at that time, and, as you recall, it was a document that was prepared on behalf of Mr. Taylor by Mr. Kachlein when Mr. Kachlein was subject to investigation by the United States Probation Officer.

Bear in mind, Ladies and Gentlemen of the Jury, when you look for the omitted name on this document——

The Court (Interposing): Mr. Moriarty, you mean Mr. Taylor?

Mr. Moriarty: Excuse me. Didn't I say Taylor? Bear in mind, when you look for the omitted name on this document of Mr. Taylor's, that Mr. Taylor's request or motion for leniency was that he had been working 16 to 18 hours a day, and had been neglectful of his own personal affairs. He was then in command of the Forster enterprises, and the Forster enterprises were the people who were keeping him working 16 to 18 hours a day, his largest account.

The man who could explain to the Probation Officer more fully than any other individual was [5511] Hans Forster, and yet you can take this document, read it through, and while it lists the names of various people over two pages, I think approximately ten names, the name of Hans Forster is peculiarly missing.

Mr. LeSourd: Mr. Moriarty, would you please refer to the first part of this, where it says that

these names are in addition to the names previously supplied.

Mr. Moriarty: I didn't know that.

Mr. LeSourd: I wish you would correct that before the Jury.

Mr. Moriarty: I have never seen this document.

Mr. LeSourd: It is in that letter. It is that which you have before you.

The Court: I suggest that counsel address the Court, if you interrupt argument.

Mr. LeSourd: I am sorry.

Mr. Moriarty: Ladies and Gentlemen of the Jury: This case involves fraud, cheating your Government and mine. Three defendants are charged. The integrity of a Nation depends upon its law observance. The Nations that have disappeared in the past have been Nations that did not observe their laws and law observance; and the taxes of the Government are things that are the sinews of the Government, that [5512] make it possible for these institutions, the Courts and the Juries, to function.

We have heard about the Little World at Issaquah that went shattering to ashes.

I am reminded that if one million dollars in taxes had been paid by Hans Forster, on account of his understatement of taxes, there will remain in the Little World at Issaquah another million dollars and a half if two million six hundred thousand dollars was paid for the Forster enterprises without account 198 and without the Cadillac, the barns and the houses.

We have heard of this Little World at Issaquah,

and we have heard of the book, "The Little World" and I would like at this time to indulge in some matchless prose that Edwin Markham wrote:

"Yet all the while, in secret, without sound;
"The fat worm gnawed the timbers underground.
"The twister worm whose epoch is an hour
"Caverned its way into the mighty tower
"And suddenly it swayed, it shook, it broke
"And fell in darkening thunder at one [5513] stroke.
"The tall shaft, with an angel on the crown,
"Fell ruining—a thousand years went down.
"And so I fear, my Country, not the hand
"That shall hurl might and whirlwind on the land.
"I fear not Titan traitors that shall rise
"To stride like broken shadows on our skies.
"I fear the vermin that shall undermine
"Senate and school and citadel and shrine;
"The worm of fraud, the fatted worm of ease
"And all the crawling progeny of these.
"I fear the vermin that shall honeycomb the towers
"And walls of State in unsuspecting hours."

I now close. I have no doubt that you have been moved by the arguments of Counsel. They are men of many talents. They have been brought here to sway you to their way of thought. My only sworn duty is to see that Justice is done. I want [5514] no conviction for personal reasons. I would be false to the trust given to me by the President of the United States if I did. This is your Government, the

future of your America, the heritage of you and your children.

I have endeavored to analyze the evidence and testimony to show deliberate evasion, expertly conceived, and cleverly accomplished, and wilfully done by each of the defendants and it has been clearly shown. It is my humble opinion that Hans Forster did not want to pay taxes on any income which he could hide, and that his wish was carried out by his aides to accomplish only one thing — saving money for him and leaving to others the burden of Government in the defense of its Constitution.

If you believe that was innocently done, you should acquit the defendants; but, if you consider acquitting Mr. Forster, then don't humiliate the Government by convicting the other defendants.

You are the conscience of this District. Before you commit yourselves to a verdict, analyze for yourselves the evidence. It is not for you to find ways to avoid a duty, even though that duty, like mine, is not pleasant.

I ask you to do your duty to the Government [5515] and to these Defendants under the Court's instructions.

Last January, you were sworn to well and truly try this case. Today, you are asked to discharge that oath.

I wish only a true verdict, and I ask The Eternal God to guide you and your judgment that it will be a true verdict, So Help You God.

* * * * * [5516]

The Court: Members of the Jury:

You have now heard the evidence in this case and the argument. It becomes the duty of the Court to instruct you as to the law governing the case. It is your duty, as jurors, to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out but one instruction alone as stating the law, but must consider the instructions as a whole.

And regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon [5521] any other view of the law than that stated in the instructions of the Court. These instructions will *not* be given to you and under the procedure followed in the Federal Court it will be incumbent upon you to listen attentively and retain insofar as possible from the Court's statement of the instructions the law as contained therein.

Unless otherwise indicated, each instruction given, that is, each particular subject as covered by the instructions should be considered by you as referring separately and individually to each defendant here on trial, unless specifically otherwise indicated.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the Indictment and the denial made by the pleas—in this case, not guilty—of the accused. And in so doing you are to discharge a function requiring the highest standards of impartiality. You are to perform this duty without bias or prejudice as to any party. The law does not permit

jurors to be governed by sympathy, prejudice, or public opinion. The accused and the Government and [5522] the public all expect that you will carefully and impartially consider all the evidence, follow the law as stated by the Court in these instructions and reach a just verdict.

An Indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and does not create any presumption or permit any inference of guilt.

Rather, the law presumes every defendant to be innocent until he is proven guilty by the evidence beyond a reasonable doubt. This presumption is not a mere matter of form but is a substantial right of every defendant and this presumption continues throughout the entire trial and until such time as you have found that it has been overcome by the evidence beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of the charge against him. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence [5523] in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence.

A reasonable doubt exists in any case when, after the careful and impartial consideration of all the evidence, the jurors do not feel convinced to a

moral certainty that a defendant is guilty of the charge.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of a witness for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

You are further instructed, however, that proof beyond a reasonable doubt does not mean that the evidence shall establish the guilt of a defendant beyond all possible doubt. It is rarely possible to prove anything to an absolute certainty. [5524] The law does not require absolute certainty of guilt before there can be a verdict of guilty at your hands.

You must use your common sense as men and women possessing some knowledge of the ways of life, and if, after examining carefully all of the facts and circumstances established by the evidence in this case and then if you can feel and say that you have a settled and abiding conviction of the guilt of a defendant then you are satisfied beyond a reasonable doubt.

Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense, or, on the other hand, innocent. One is direct evidence—such as the testimony of an eye witness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, [5525] but simply requires that, before convicting a defendant, the jury be satisfied of the defendants' guilt beyond a reasonable doubt from all the evidence in the case.

In order to justify a verdict of guilty based in whole or in part upon circumstantial evidence, the facts in the chain of circumstances shown by the evidence must be consistent with the guilt of the accused and inconsistent with every reasonable supposition of innocence.

If the facts and circumstances shown by the evidence are as consistent with innocence as with guilt, the jury must acquit the accused.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When counsel for the Government on the one hand and counsel for one or more of the defendants on the other stipulate or agree to the existence of a fact, the jury must accept the stipulation as evidence and regard that fact as conclusively proved as between or among the parties to the stipulation.

There is nothing peculiarly different in [5526]

the way a jury is to consider the proof in a criminal case from that in which all reasonable persons treat any question depending upon the evidence presented to them. You are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted, if limited, and give it a reasonable and fair construction.

Bear in mind at all times that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in this case.

If the accused be proved guilty, say so.

If you find him innocent, say so. Remember at all times that a defendant must be acquitted if any reasonable doubt remains in your minds.

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted or stipulated and all applicable presumptions stated in these instructions. Any evidence as to which an objection was sustained by the court and any evidence ordered stricken by the court must be entirely disregarded.

You are sworn to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the [5527] witnesses. On the contrary, you are permitted to draw, from facts which you find to have been proved, such inferences as seem justified in the light of your experience.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

A presumption is an inference which the law in certain instances requires the jury to make in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary; but unless so outweighed the jury is bound to find in accordance with the presumption.

Unless and until outweighed by evidence to the contrary, the law presumes that transactions between persons have been fair and regular; that the ordinary course of business has been followed; and that the law has been obeyed.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. A witness is presumed to speak [5528] the truth. But this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given, or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, his demeanor and manner while on the stand. Consider also the relation each witness may bear to parties in the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

A defendant is a competent witness and his testi-

mony is to be judged in the same manner as that of any other witness.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, [5529] like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or willful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you think it deserves.

A witness may be discredited or impeached by contradictory evidence; or by evidence that at another time the witness made statements inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you think it deserves. [5530]

Now, coming to the Indictment in this case:

The defendants are here charged under an Indictment consisting of nine counts with a violation of a Federal Statute, the applicable provisions of which read as follows:

"Any person required to collect, account for, and pay over any tax imposed * * * who willfully attempts in any manner to evade or defeat any tax imposed * * * or the payment thereof * * * shall * * * be guilty of a felony."

The first count charges the defendants with wilfully and knowingly attempting to defeat and evade a large part of the income tax due and owing by Hans Forster for the calendar year 1945 by filing and causing to be filed with the Collector of Internal Revenue at Tacoma, a false and fraudulent income tax return, when they knew at the time that the net income of Hans Forster was substantially greater than that reported.

Counts II, III and IV of the Indictment make the same charge as that contained in Count I except that the charge relates to the income tax of Hans Forster for the years 1946, 1947 and 1948, respectively. The charge contained in Count V is [5531] similar to the charge in the first four counts but relates to the combined income tax of Hans Forster and his wife, Evelyn Forster, for the year 1949.

As to the remaining counts, that is, Counts VI, VII, VIII and IX, they charge the defendants, Hans Forster, L. Hicks Taylor and Harold Erickson, (alleging they were President, Secretary and Office Manager, respectively, of the Issaqual Cream-

ery Co.), with willfully and knowingly attempting to defeat and evade a large part of the taxes due and owing by the Issaquah Creamery for the calendar years 1946, 1947, 1948 and 1949, respectively, by filing and causing to be filed with the Collector of Internal Revenue, at Tacoma, Washington, a false and fraudulent tax return when they knew at the time that the net income of the corporation was substantially greater than that reported.

I believe what I have stated is a sufficient summary of the charge contained in the Indictment against the defendants.

Of course, the Indictment will be given to you in order that you may more fully understand the various counts, and you will be allowed to take it to the jury room for your examination and study so that [5532] you can more fully understand the charges contained therein. Let me instruct you again, however, that the Indictment isn't evidence at all; it is merely a formal instrument whereby persons are charged and brought to trial. You should clearly understand, therefore, that when the Indictment goes with you to the jury room it is only for the purpose of giving you a better understanding as to the nature of the charges against the defendants.

Each defendant has entered a plea of not guilty to each and all of the nine counts of the Indictment and that means that each defendant denies every material allegation contained in the Indictment and every material allegation in each count thereof, thereby placing upon the Government the burden

of proving beyond a reasonable doubt every material allegation in the Indictment.

The essential elements of the crime or offense charged in each count of the Indictment are three:

(1) That there was owing to the Government more income tax than that shown in the return of the taxpayer for the particular taxable year in the applicable count of the Indictment; [5533]

(2) That the particular defendant knew that there was owing more income tax than that shown in the income tax returns; and

(3) That the particular defendant willfully attempted to evade or defeat part of such tax by filing or causing to be filed a false return.

With respect to the first essential element—namely, that there was owing to the Government more income tax than that shown in the return of the taxpayer for the particular taxable year in the applicable count of the Indictment—as to that first element I believe it proper at this time for the Court to make some observation or comment on the evidence so far as it relates to that first essential element. Of course, it is within the province and is the right of the jury to disregard entirely the Court's comments on the evidence. However, the defendant Forster, the taxpayer involved in the first five counts of the Indictment, and for practical purposes the sole owner of the stock of the Issaquah Creamery which is the taxpayer involved in the last four counts of the Indictment, has, through his counsel, Mr. Griffin, admitted from the outset of this trial that [5534] there was owing substantially

more income tax than that shown in the return of the taxpayer for all the years covered by each count of the Indictment. The defendants Taylor and Erickson, so far as the Court has been able to determine from the evidence, do not dispute that issue. In view of this situation I suggest to the jury that you should have little difficulty in determining from the evidence that the first essential element has been proved beyond a reasonable doubt as to all defendants and with respect to all counts.

In making this observation I do not infer in any way that all the items of undisclosed income or all items of apparent personal expense charged to business expense as may appear in evidence are taxable as contended by the Government. By way of illustration, there has been considerable evidence admitted relative to payment of salary by Finstad and Utgard to Mr. Egeness. The Government contends that a portion of this salary was paid by Mr. Egeness to Mrs. Finstad for the benefit of Mr. Forster and therefore they assert that it was income of Mr. Forster for the years during which it was paid to Mrs. Finstad. The Defendant Taylor contends otherwise, or more precisely, as urged by his counsel, that the tax liability [5535] as to the item was uncertain during the years involved.

It is the Court's view of the evidence that the taxability of this item as well as other disputed items of alleged income is immaterial with respect to the first essential element of the offense and for that purpose such items may be eliminated from your consideration as items of income, of course,

provided you find there is no dispute as to the issue that there was owing substantially more income tax than that shown in the returns of the taxpayer for all the years involved.

Now bear in mind I make no comment or observation as to these matters in evidence except as they relate to or bear upon the first element of the offense charged as I have stated. What consideration you are to give the evidence as to these items in connection with the remaining two essential elements, namely, each defendant's knowledge that substantial tax was owing, and whether there existed a willful attempt on the part of any or all the defendants to evade any of it, is a matter left exclusively and entirely to your determination.

Those last two elements are the most important elements for your determination in this case [5536] and many of the following instructions will be devoted to clarifying to the best of my ability what the willfulness and knowledge as required in this case is or must be.

You must consider each count separately and also you must consider each defendant separately with regard to each and every count. If, as to a particular defendant, you find that all the elements have been established beyond a reasonable doubt as to a particular count you should find that defendant guilty as to that count. On the other hand, if you have any reasonable doubt as to any one of these three elements you should acquit the particular defendant concerned as to such count.

The gist of the offense charged in the Indictment

is willful attempt to evade or defeat the income tax imposed by the income tax law. The word "attempt" as used in this law involves two elements:

(1) an intent to evade or defeat the tax, and

(2) some act done in furtherance of such intent.

The word "attempt" contemplates that a defendant had knowledge and understanding that during the calendar year 1945 to 1949, inclusive, Hans Forster, or in the [5537] case of Counts VI to IX, inclusive, the Issaquah Creamery Company during the years of 1946 to 1949, inclusive, had an income in such years which was taxable and which was required by law to be reported and that such defendant attempted to evade and defeat the tax thereon, or a portion thereof, by purposely causing the respective returns to exclude income which such defendants knew Hans Forster or Issaquah Creamery Company had received during the years in question, and which such defendants knew should be included in such returns.

With respect to the offenses charged there must exist a union or joint operation of act and intent. The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

A person is held to intend all the natural and probable consequences of acts knowingly done. That is to say, the law assumes a person to intend all the consequences which one standing in like circumstances and possessing like knowledge should reasonably expect to result from any act which is knowingly done.

With respect to offenses such as charged in this

case, proof of specific intent is required before there can [5538] be a conviction. Now, specific intent, as the term suggests, means more than a mere general intent to commit the act.

A person who knowingly does an act which the law forbids, or who knowingly fails to do an act which the law requires, purposely intending to violate the law or recklessly disregarding the law, acts with specific intent.

It is not necessary for the Prosecution to prove knowledge of the accused that a particular act or failure to act is a violation of the law. Everyone is held to know what the law forbids and what the law requires. However, evidence that the accused acted or failed to act because of ignorance of the law is to be considered in determining whether or not the accused acted or failed to act with specific intent or knowingly and willfully as charged.

The law provides that any person who aids, abets, counsels, or induces the commission of an offense against the United States is punishable as a principal. Therefore, in order to find any defendant guilty as to any count of the Indictment it is not necessary for you to find that he participated in all the acts out of which [5539] the understatement of income and tax for that year arose or for you to find that he had knowledge of all such acts. It is sufficient if you find beyond a reasonable doubt that he willfully and knowingly aided or assisted in the evasion of any substantial part of the tax owing for the year covered by the applicable count. In

other words, a defendant becomes a principal when he consciously shares in the offense.

You will note that the acts charged in the Indictment are alleged to have been done "willfully and knowingly."

An act is done "willfully" if done voluntarily and purposely and with a specific intent to do that which the law forbids.

"Willfulness" implies bad faith and an evil motive.

An act is done "knowingly" if done voluntarily and purposely and not because of mistake, inadvertence or some other innocent reason.

Intent may be proved by circumstantial evidence. It rarely can be established by any other means, because we know that while witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no [5540] eye-witness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged.

In determining the issue as to intent the jury is entitled to consider any statements made and acts done or omitted by the accused, and all facts and circumstances in evidence which may aid determination of state of mind.

You are entitled to consider the motive, if any, of the respective defendants in connection with the various transactions involved as bearing upon the

existence or non-existence of the required specific intent.

You are instructed that the Government is not obliged to prove an attempted evasion of the entire amount of the tax as alleged in the Indictment. It is sufficient for the Government to prove beyond a reasonable doubt that there was an attempt to evade any substantial portion of the tax liability for the years charged in the various counts of the Indictment. The word "substantial" as here used depends upon the facts in each case—it means more than a small sum that may have been the result of [5541] an honest mistake or miscalculation. It is not necessary to prove that the tax due was actually evaded but it is necessary to prove that there was a willful and positive attempt to evade the tax in any manner or to defeat it by any means.

The signing of an income tax return by a taxpayer makes it his return and if it is false and the taxpayer knows it to be false, he violates the law if he files it willfully and with an intent to evade the payment of his tax.

Every person subject to income tax, except persons whose gross income consists solely of salary or wages for personal services or arises solely from farming,—every other person—is required to keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of the gross income and the deductions, credits and other matters required to be shown in any income tax return.

A crime, such as the offense charged here, may

not be imputed to one defendant because of the acts of another simply because the former [5542] stands in a relation of employment, trust or confidence with that other defendant. Thus, if a taxpayer operating a business, uses ordinary business care and prudence in the selection of office personnel and employees and in the selection of an accountant or tax adviser and supplies or makes available all necessary information, and requests such accountant or tax adviser to prepare an income tax return, and the taxpayer signs and files the return prepared by such accountant or tax adviser in reliance upon the skill, knowledge, ability and competence of his office employees and accountant and tax adviser, should it happen that such tax return prove fraudulent, the taxpayer is not guilty of such fraud unless he knew the return to be false and filed it with intent to evade tax. In this connection, however, you should bear in mind that the owner of a business need not be the actual bookkeeper to be familiar with the affairs and finances of his business.

Good faith on the part of a defendant is a complete defense to the charges set forth in the Indictment. Thus bona fide mistakes in preparing or filing a tax return are not to be considered by you as false or fraudulent statements within the [5543] scope of the charge made in the Indictment because willful evasion of tax requires an intentional act or omission as compared to an accidental or inadvertent one. It also requires a specific wrongful intent to conceal an obligation known to exist as compared

to a genuine misunderstanding of what the law requires or a bona fide belief that certain receipts are not taxable. Likewise, negligence or carelessness in the handling of books of account, in providing information to be used in preparing income tax returns, or in handling business affairs is not equivalent to fraud with intent to evade tax.

On the other hand, one who signs a tax return, or assists in preparing a return or in providing information to be used therein cannot escape the responsibility of good faith and ordinary care and attention as to the correctness of a return which he may sign, file or cause to be filed. A man may not close his eyes to obvious facts and say he is not aware of them. He must exercise such intelligence as he has and if the evidence establishes beyond a reasonable doubt that a defendant intended to conceal tax liability from the Government then, of course, he was not acting in good faith. [5544]

The low provides that the net income of the taxpayer shall be computed upon the basis of the taxpayer's annual accounting period, in accordance with the method of accounting regularly employed in keeping the books of the taxpayer. The method of accounting employed does not clearly reflect the income a computation shall be made upon such basis and in such manner as, in the opinion of the Commissioner of Internal Revenue, does fairly reflect the taxpayer's income.

When books are found to be inadequate the Government is authorized by law to adopt a reasonable method of ascertaining income. The net worth and

expenditures method has been recognized in law as such a method.

A person's net worth for a given year is the difference between all his assets on one hand and all his liabilities on the other. An increase in net worth for any year is computed by subtracting the net worth at the beginning of the year from the net worth at the end of the year. In order to compute taxable net income under this net worth and expenditures method you take the increase in net worth for the particular year and add to it the taxpayer's living expenses and income taxes [5545] paid for that year. From this total you must subtract nontaxable funds, such as gifts or inheritances, received during the year. If the remainder exceeds the taxpayer's exemptions and deductions, such income is taxable.

You are instructed that although the defendants herein are charged with attempting to evade income taxes of Hans Forster for the years 1945 to 1949, inclusive, and with attempting to evade income taxes for Issaquah Creamery for the years 1946 to 1949, inclusive, the court has, nevertheless, permitted evidence of transactions of Hans Forster or the Issaquah Creamery for earlier years. Such evidence is to be considered by you only so far as you may find it bears upon or relates to the knowledge or intent of each defendant with respect to similar transactions during the years charged, providing, of course, that you first find from the evidence beyond a reasonable doubt that there was an understate-

ment of income and taxes, which, as I indicated before, the Court finds in dispute.

Similarly, the Court has permitted evidence of the net worth of Hans Forster for earlier years, and such evidence is to be considered by you [5546] only so far as you may find it bears upon or relates to the net worth of Hans Forster at the end of the years 1944 to 1949, inclusive, or as it bears upon or relates to the knowledge and intent of Hans Forster during the years 1945 to 1949, inclusive, with respect to income tax evasion, again, if you find, of course, beyond a reasonable doubt, first that there was an understatement of income and taxes for any of the years charged, which again, as I stated to you, the Court feels there is no question.

Evidence likewise has been admitted concerning transactions of corporations other than the Issaquah Creamery, including books, records and tax returns of the various so-called Forster enterprises, in some instances covering periods in years prior to as well as during the years covered by the Indictment. We are not here concerned with the tax liability of persons other than Issaquah Creamery and Hans Forster. Therefore, such evidence, apart from any bearing it may have upon income received by Issaquah Creamery and/or Hans Forster for the years included in the Indictment, is to be considered by you only so far as you may find it bears upon or relates to the knowledge or intent of each defendant [5547] with respect to similar transactions of Hans Forster and Issaquah Creamery Co. during the years charged, providing, again, you first find

from the evidence beyond a reasonable doubt that there was an understatement of income and tax for any of the years charged.

Defendants Taylor and Erickson are charged with willful attempt to evade and defeat the income taxes of Hans Forster and Issaquah Creamery, and the defendant Forster is likewise charged with willful attempt to evade and defeat the income taxes of himself and Issaquah Creamery. In this regard it is not necessary for you to find that a defendant so charged was concerned in the actual preparation of the false and fraudulent income tax return, if filed by another.

Section 145(b) of the Internal Revenue Code punishes a willful attempt to evade and defeat taxes in any manner and so you may find that conduct such as keeping false books, making false entries in the books, failing to make entries in books, altering invoices or other records, concealment of assets, covering up sources of income, handling one's affairs to avoid the making of usual records and any conduct the likelihood of which would be to mislead or conceal [5548] as constituting an attempt to evade and defeat taxes.

There is a distinction between the civil liability of a defendant and the criminal liability. This is a criminal case. The defendants are charged under the law with the commission of a crime, and the fact that civil liability for the payment of taxes claimed to be due the United States has or has not been settled, in other words, if civil liability has been settled or not—is not to be considered by you

in determining the issues in this case, except in one respect and that is that it may throw some light on the intent of the defendant Forster.

The defendant, Taylor, as the evidence shows, has previously pleaded guilty to a charge of attempted evasion of his personal income tax for the year 1943.

You are entitled to consider this fact only in connection with your assessment of his credibility as a witness. You are not to consider Mr. Taylor's previous plea of guilty as in any way tending to establish any of the elements which the Government must prove in this case in order to establish guilt as to any of the counts in the Indictment. [5549]

Witnesses have testified in this case as to the general reputation of defendants in this case for honesty and integrity and for truth and veracity. Such testimony was offered to show the good character of such defendants. The jury should consider such evidence along with all other evidence in the case. Evidence of a defendant's reputation, as to those traits of character ordinarily involved in the commission of the crime charged, may in itself give rise to a reasonable doubt, since the jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

There is evidence, consisting of testimony of accountants, as well as exhibits prepared by accountants, which have been admitted as or in connection with expert opinion on issues involved in this case.

Such evidence may serve to assist you in your consideration of the issues here involved, but you

are not bound by the computations or other opinion testimony of an expert. You should give such evidence the weight and consideration you believe it deserves in the light of other proof in the case, particularly as to whether or not the facts on which the expert's [5550] testimony was based have been established by other evidence.

Reference has been made in the testimony of several witnesses to certain sales of ice cream or ice cream mix by Issaquah Creamery as over-quota.

As to such references I caution you that we are not here concerned in any manner with any wartime law, regulation or practice relative to quota, under-quota or over-quota sales of ice cream or any other food products.

Therefore, any characterization of a rule or transaction as over-quota is not to be given any significance because of that circumstance alone.

During the course of the trial, I have occasionally asked questions of a witness in order to bring out facts not then fully covered by the testimony.

Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

It is the duty of the Court to admonish [5551] an attorney who, out of zeal for his cause, does something which is not in keeping with the rules of evidence or procedure. I think there are few instances in this case, if any.

You are to draw no inference against the side to

whom an admonition of the Court may have been addressed during the trial of this case.

It is the duty of lawyers upon each side to make objections when the other side offers evidence which counsel believes is not admissible under the rules of evidence.

It is the duty of the Court to decide whether under the rules of evidence, testimony or other evidence may be received.

Whenever the Court has sustained an objection to a question, you are to disregard that question, and may draw no inference from the wording of it or speculate as to what the witness would have said if permitted to answer. Nor may you assume any party has objected to a question because that side expected the answer, if given, to be unfavorable.

During the trial of this case the Court has permitted certain evidence to be introduced over the objection of counsel. In so ruling the Court has not determined or indicated any opinion as to the weight [5552] or effect of such evidence.

In judging the credibility of witnesses and the weight and effect of evidence, you are not to consider the rulings or comments of the Court in admitting or rejecting evidence.

The punishment provided by law for the offense charged in the Indictment is a matter exclusively within the province of the Court, and is not to be considered by the Jury in arriving at an impartial verdict as to the guilt or innocence of the accused.

It is your duty to give separate, personal con-

sideration to the case of each individual defendant.

When you do so, you must analyze what the evidence shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants.

Each defendant is entitled to have his case determined solely from his own acts and statements and the other evidence in the case which may be applicable to him.

The law of the United States permits the [5553] judge to comment to the jury on the evidence in the case. Such comments are only expressions of the judge's opinion as to the facts.

With respect to any comments I have made you are free to disregard them entirely, since the jurors are the sole judges of the facts.

Under these instructions you may find all three defendants guilty or all not guilty, or you may find one or two of them guilty and the remaining two or one not guilty of the charge contained in the particular count.

The verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. In other words, your verdict you reach must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view of reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not

hesitate to re-examine your own views and [5554] change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or the effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

There is no fixed method of procedure for you to follow during your deliberations. However, you should proceed in such a way as to give every juror an equal chance with every other to express his views and in such a way as will tend to produce the most intelligent result possible.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion on the case or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when shown it is incorrect. You are not partisans. You are judges—and when you go into the jury room, you are the sole judges of the facts in this case. Your sole interest is to ascertain the truth from the evidence in the case and you will make a worthwhile contribution to the administration of [5555] justice if you arrive at an impartial verdict in this case.

Upon retiring to the jury room, you will select one of your number to act as foreman. If you choose, you may select one of the ladies.

The foreman will preside over your deliberations and be your spokesman in Court.

Forms of verdicts have been prepared for your convenience. There is a form for each defendant, one for Mr. Forster; one for Mr. Erickson, and one for Mr. Taylor. It reads: "We, the jury in the above-entitled case, find the defendant guilty as charged in Count I of the Indictment, ... guilty as charged in Count II of the Indictment," and so on. Put in "is," if you find him guilty; put in "not," if you find him not guilty. There is a place for signature at the end to be signed by the foreman, and a place to fill in the date when you reach the verdict.

You will take these forms to the jury room and when you have reached unanimous agreement as to your verdict you will have your foreman fill in, date and sign the forms to state the verdict upon which you agree as to each defendant, and then return with your verdicts to the courtroom. [5556] You will find envelopes up there. Each verdict, when reached, should be folded, inserted in the envelope and sealed, and then brought back with you to the court room.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by one of the Bailiffs. In this respect, you will find paper and pencil up there and any communication you wish should be written out, addressed to me, stating what your inquiry will be. You may not have one, but in the event you should happen to, that is the procedure you should follow. But bear in mind on such occasions you are not to reveal to the court or any person how the jury stands,

numerically or otherwise, on the question of the guilt or innocence of the accused, or any of them, or as to any count, until after you have reached an unanimous verdict.

That, Ladies and Gentlemen of the Jury, completes the Court's instructions.

Now, under the law, the counsel are authorized, and it is their duty to confer with the Court relative—in the absence of the Jury, relative to any matters contained in the instructions which they believe should be considered. [5557]

Therefore, I will excuse you now. You should not begin your deliberations, however, and don't start any discussion of the case. Just remain there and without going into these matters, just as you have on the occasion of other recesses, and in the short time—I trust it will be a short time—the Court will call you back and will advise you if there are any further instructions.

The Bailiffs will then be sworn, and you will then begin your deliberations in accordance with the instructions as I have now given them to you. If you should have any specific question, if you wish to ask when you come back, you may do so. I don't mean as to the evidence, but if there is some misunderstanding, or some question you want to know as to how to proceed, if you will state it, I will attempt to enlighten you.

Is there anything further before we excuse the Jury at this time?

Mr. Griffin: No, your Honor.

Mr. Moriarty: No, your Honor.

The Court: All right. Bear in mind the admonition given you. You may now be excused.

(Whereupon, the jury retired from the court room.) [5558]

* * * * *

The Court: Members of the Jury:

I am sorry we were a little delayed in responding to your request but, first of all, I have a note which reads as follows:

"The Jury wishes an interpretation of the word willfully as used in the Indictment. Harold F. Craft."

Is that correct?

The Foreman: Yes, sir; of the entire Jury.

The Court: Ladies and Gentlemen of the Jury:

In an effort to meet that request of yours the Court is going to first give you again the instruction I gave you yesterday as to willfully and another instruction that is related to it. I will supplement that with a little further statement which I think in essence is the same but probably stated differently. That is, with different words.

Now I will give you the instruction as I gave it yesterday:

You will note that the acts charged in the Indictment are alleged to have been done "willfully and knowingly."

An act is done "willfully" if done voluntarily and purposely and with a specific intent to do that which the law forbids. "Willfulness" implies bad faith and an evil motive.

An act is done "knowingly" if done voluntarily and purposely and not because of mistake, inadvertence, or other innocent reason.

Now, you will note I referred to specific intent and, therefore, will now read that to you again so that you will have that in mind.

With respect to offenses such as charged [5575] in this case, proof of specific intent is required before there can be a conviction. Specific intent, as the term suggests, means more than a mere general intent to commit the act.

A person who knowingly does an act which the law forbids, or who knowingly fails to do an act which the law requires, purposely intending to violate the law or recklessly disregarding the law, acts with specific intent.

Now, to supplement that, as I say again, I am going to give you, in substance, the same matter.

When used in a criminal statute—that is, the word "willful" or "willfully"—when used in a criminal statute it generally means an act done with a bad purpose, without justifiable excuse, stubbornly, obstinately, perversely.

The word is also characterized—employed to characterize a thing done without ground for believing it lawful, or conduct marked by reckless disregard whether or not one has the right so to act.

That, I believe, Ladies and Gentlemen, covers the request as you have made it; and so, with that further instruction, you may now be excused and return and continue your deliberations. [5576]

(Whereupon, the Jury retired from the court room.)

The Court: It is stipulated the Jury have left the court room?

Mr. Griffin: Yes, your Honor.

Mr. Moriarty: Yes, your Honor.

The Court: Any exceptions?

Mr. Griffin: I feel obligated——

The Court: (Interposing) I feel it is quite all right.

Mr. Griffin: ——on behalf of the Defendant Forster to except to the use of each and every word in the new instruction just given by the Court and particularly that portion of it dealing with "reckless disregard."

The instruction does not cover the use of "good faith," "mistake," and rather stultifies the definition given the Jury originally on willfulness which, except for the use of the words "reckless disregard" was a full and complete instruction in that particular as I view it.

Mr. Cox: The Defendant Taylor would continue to except only to the use of the words "reckless disregard" of the law.

The Court: Consistent with your former [5577] statement.

Mr. Cox: Yes, your Honor.

Mr. Keesling: The Defendant Erickson joins in the exceptions of Mr. Griffin and in addition, particularly for the reason that as applied to this case,

the Defendant Erickson thinks that the instruction should be more definitive than stating that it is a specific wrongful intent to evade a known tax obligation. [5578]

* * * * *

[Endorsed]: Filed February 7, 1955.

[Title of District Court and Cause.]

SUPPLEMENTAL TRANSCRIPT OF RECORD

TRANSCRIPT OF PORTIONS OF PROCEEDINGS

had in the above-entitled and numbered cause, before a Petit Jury, duly empaneled, and the Honorable William J. Lindberg, a United States District Judge, at Seattle, Washington, commencing at 10:00 o'clock, a.m., on the 4th day of February, 1954. [1*]

* * * * *

FRANK B. DONALDSON

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your name, please, and the spelling of your name.

The Witness: Frank B. Donaldson.

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Frank B. Donaldson.)

The Clerk: D-o-n-a-l-d-son (spelling)?

The Witness: Yes.

Q. (By Mr. Maxwell): Will you state your name, please, sir? A. Frank B. Donaldson.

Q. And where do you reside, Mr. Donaldson?

A. 9010 West Shorewood Drive, Mercer Island.

Q. And where are you employed?

A. Peoples National Bank.

Q. In Seattle? A. Seattle, yes.

Q. And that is the central office?

A. Main Office.

Q. Where is that located?

A. 1414 4th Avenue.

Q. And what is your capacity with the Peoples National Bank? [5]

A. Vice-president.

Q. You are Vice-president? A. Yes.

* * * * * [6]

Q. (By Mr. Maxwell): Mr. Donaldson, I have handed you Exhibit No. 121 and ask you if you can identify that document?

A. This is a financial statement submitted to us of Hans Forster as of December 31, 1949.

Q. And, generally, what does it contain?

A. It shows a list of his assets and his liabilities and the net worth.

Q. And net worth; who submitted that document to you, or your bank?

A. The form is signed by Hans Forster, and I cannot say by whom it was submitted.

Q. Do you know Mr. Forster's signature?

(Testimony of Frank B. Donaldson.)

A. Yes, sir.

Q. Is that his signature?

A. That is Mr. Forster's signature. [90]

Mr. Maxwell: At this time, I will offer Exhibit 121 into evidence.

Mr. LeSourd: No objection.

Mr. Griffin: May I inquire?

Was this submitted to you, this statement submitted to you, personally, Mr. Donaldson?

Mr. LeSourd: Objected to. He already testified he didn't know who submitted it.

The Court: This is voir dire on these exhibits. We will proceed with the examination.

Mr. Griffin: My question was, whether this was submitted to you personally, if you recall?

The Witness: No, I do not recall on that particular statement.

Mr. Griffin: Were the—was it signed at the time it was received, if you know, or was it signed later?

The Witness: On this particular statement, I do not recall.

Mr. Griffin: Now, on this particular statement, there is—I would take it, a change of figures by $110,000, a pencilled notation. Do you know who made that?

The Witness: Our credit department. There was an error in addition.

Mr. Griffin: There was an error in addition?

The Witness: Yes, sir.

(Testimony of Frank B. Donaldson.)

Mr. Griffin: Now, attached to the statement is——

Strike the "is".

Well, the third sheet, Puyallup Creamery Company, Profit and Loss Statement, fourth sheet Renton Ice and Ice Cream Company balance sheet, and the last sheet, Renton Ice and Ice Cream Company Profit and Loss Statement.

On the first statement of the Renton Ice and Ice Cream Company are certain words in pencil. Do you know whether they were placed on there at the bank?

The Witness: They undoubtedly are bank markings.

Mr. Griffin: Thank you.

The Witness: Yes.

Mr. Griffin: No objection.

Mr. LeSourd: No questions.

The Court: Exhibit 121 for identification may be admitted.

(Plaintiff's Exhibit 121 admitted in evidence.)

Q. (By Mr. Maxwell): Now, I am handing you Exhibit 122, Mr. Donaldson. [92]

Can you state what that exhibit is?

A. This is a financial statement headed Hans Forster; the statement dated December 31, 1948.

Q. Do you know from whom the bank received this statement? A. No, sir.

Q. Was it handed to you personally?

A. I do not believe so.

(Testimony of Frank B. Donaldson.)

Q. Can you state whether or not that is the signature of Hans Forster?

A. That is the signature of Mr. Hans Forster.

Q. I notice there are some pencilled notations on the document.

Can you state who put those notations on the document?

A. It would appear to be our credit department.

Mr. Maxwell: At this time, the Government will offer Exhibit 122 into evidence.

Mr. Griffin: These notations—May I inquire if the Court please?

The Court: You may.

Mr. Griffin: With reference to Exhibit 122, these notations show no mistake in addition?

The Witness: No, sir; that is merely for our [93] credit department in breaking up the assets and that is a total of current assets segregating it from the total assets. It is merely used for the spread sheet that was submitted as evidence.

Mr. Griffin: By the "spread sheet", you mean?

The Witness: The bank record. I have forgotten the number. The one here.

Mr. Maxwell: No. 129.

The Witness: 129.

Mr. Griffin: 129 for identification.

I think—with reference to the figure on here, which you say is referred to in the spread sheet for quick addition, quick assets, cash and United States Bonds would be quick assets, wouldn't it?

Mr. Maxwell: If your Honor please, this appears

(Testimony of Frank B. Donaldson.)

to me to be matters to be brought out on cross-examination.

The Court: Objection sustained.

Mr. Griffin: I appreciate your Honor's ruling. However, I would like, if I may, to show the exhibit to the witness because I am not trying to impeach him. I think, if he examines the figures, he will find that they are not just what he suggested at all.

The Court: You may let him view it again, if you wish.

Mr. Griffin: He didn't have it before him when [94] he answered. It is these figures here. The total of this interest here. See? Those last two items, is all.

The Witness: That is right. I would have to take that statement back. It is not the quick assets.

Mr. Griffin: Thank you. I have no objection.

Mr. LeSourd: I have no objection to this exhibit, your Honor. It is understood that the pencilled notations on these exhibits that are going in now are the notations of the bank and not properly a part of the exhibit as offered.

Mr. Maxwell: No, that is correct, although they are offered as bank records, your Honor.

The Court: I think the record shows that the pencilled notations are made by the bank and not figures made by Mr. Forster.

Mr. LeSourd: Yes, thank you.

The Court: No objection to the exhibit——

Mr. Maxwell: (Interposing) Pardon me, your Honor. I think Mr. Keesling is still examining it.

(Testimony of Frank B. Donaldson.)

Mr. Keesling: I have no objection.

Mr. Maxwell: You have no objection?

The Court: No objection? Exhibit 122 for identification may be admitted.

(Plaintiff's Exhibit 122 admitted in evidence.) [95]

Q. (By Mr. Maxwell): Mr. Donaldson, I have handed you No. 123. I wonder if you can identify that document, please?

A. This is a financial statement headed Hans Forster, as of February 29, 1948.

Q. And does it have Mr. Forster's signature on it, likewise?

A. It does have Hans Forster's signature.

Q. Can you state who—from whom the bank received that document?

A. This particular statement was received by the writer.

Q. By whom? A. By myself.

Q. By you? A. Excuse me; by myself.

Q. And when was that received, sir?

A. It would appear to have been May 4, 1948.

Mr. LeSourd: Did you say it would appear to have been? I will ask that the answer be stricken, if your Honor please.

Q. (By Mr. Maxwell): Can you state the date upon which you received that, if you know?

A. The only answer I can give is that there is a date on here by the Credit Department, which normally [96] is the date we do receive them. It is not my notation.

(Testimony of Frank B. Donaldson.)

Q. What date is that, sir? A. May 4, 1948.

Q. On this sheet there likewise appears to be pencilled notations? A. Correct.

Q. Can you state who made those notations?

A. Our Credit Department.

Q. And they were not on the document when you received it? A. No.

Mr. Maxwell: At this time, I will offer Exhibit 123 into evidence.

Mr. Griffin: May I inquire?

The Court: Yes.

Mr. Griffin: From whom did you receive Exhibit 123?

Mr. Maxwell: Your Honor, that has been asked and answered.

The Court: I think he said he received it, but not from whom.

Mr. Maxwell: I am sorry.

The Witness: As I recall, I received it from Mr. Forster.

Mr. Griffin: No objection. [97]

Mr. LeSourd: No objection, your Honor, with the same understanding with regard to the pencilled notations.

The Court: The record may so show.

Mr. Keesling: No objection.

The Court: Exhibit 123 for identification may be admitted.

(Plaintiff's Exhibit No. 123 admitted in evidence.)

Q. (By Mr. Maxwell): Mr. Donaldson, I have

(Testimony of Frank B. Donaldson.)

handed you Exhibit 124 for identification. Can you identify that document, please, sir?

A. It is a financial statement of Hans Forster as of March 31, 1947.

Q. And does it likewise contain the signature of Mr. Forster? A. It does.

Q. Can you state from whom your bank received that document?

A. The document received in the bank by Mr. Strack, from Mr. Forster and Mr. Taylor.

Q. Does that sheet likewise have pencilled notations on it? A. There are a few, yes. [98]

Q. And can you state when those pencilled notations were made, and by whom?

A. They would have been made by our Bank Credit Department.

Q. When was this sheet received by Mr. Strack?

A. I believe on May 24, 1947.

Q. This likewise contains the list of assets and list of liabilities and net worth of Hans Forster?

A. Correct.

Mr. Maxwell: I offer Exhibit 124 into evidence.

Mr. LeSourd: Your Honor, while Counsel is examining the document, may I ask the witness some questions on voir dire?

The Court: You may.

Mr. LeSourd: Mr. Donaldson, in saying that Mr. Strack received this statement from Mr. Forster and Mr. Taylor, were you speaking from certain notations in some document that you were examining at the time?

(Testimony of Frank B. Donaldson.)

The Witness: Yes, sir, and I was called into this conference at the time, but it was delivered actually to Mr. Strack.

Mr. LeSourd: May I see the notations, please?

The Court: This has reference to Exhibit 124 for identification?

Mr. LeSourd: That is right, your Honor. [99]

Mr. Maxwell: Your Honor, I would like——

Mr. LeSourd: (Interposing) Excuse me.

Mr. Maxwell: (Continuing) Your Honor, I would like at this time to have the documents that Mr. LeSourd has been examining marked for identification.

The Court: They may be. I understand they are notes.

The Witness: They are part of the file.

Mr. LeSourd: Counsel wants just the ones for this particular day's conversation, or more than that?

Mr. Maxwell: Just for that day.

I think it is continued over here.

Mr. LeSourd: It is, that is right.

The Clerk: Plaintiff's Exhibit No. 130 marked for identification.

(Plaintiff's Exhibit No. 130 marked for identification.)

The Court: Now, the question pending is on the offer on 124.

Mr. LeSourd: I was examining on voir dire and had not completed.

Mr. Maxwell: I am sorry.

(Testimony of Frank B. Donaldson.)

Mr. LeSourd: Referring to the notations in your credit file, what do you call these notations, Mr. Donaldson? [100]

The Witness: They are comments made in our credit file after an interview with the customer by the officer who normally sits in on the interview.

Mr. LeSourd: Yes, and the particular comment on the day May 24, 1947, in what is now marked for identification as Exhibit 130 bears the initials, I notice, "P.A.S."

The Witness: That is Mr. Phillip A. Strack, the Chairman of our Executive Committee.

Mr. LeSourd: And I notice—may I ask you to examine this again and tell me whether there is any direct statement as to who handed the financial statement to Mr. Strack other than merely a statement that Mr. Forster and Mr. Taylor were conferring with him at the time?

Mr. Maxwell: Your Honor, is this proper voir dire?

The Court: If you object, the Court will sustain the objection. Now, the question is: Have you any further questions?

Mr. LeSourd: Not on voir dire.

The Court: Any objections to the exhibit?

Mr. Griffin: No objection.

Mr. LeSourd: We are talking about 124, your Honor?

The Court: That is correct.

Mr. Keesling: No objection to 124. [101]

The Court: 124 may be admitted.

(Testimony of Frank B. Donaldson.)

(Plaintiff's Exhibit No. 124 admitted in evidence.)

Q. (By Mr. Maxwell): Mr. Donaldson, Exhibit for Identification No. 130 was prepared subsequent to the—rather, a sheet similar to Exhibit 130, those are prepared subsequent to a conference or talk with customers of the bank as a memorandum of what occurred on that occasion, is that correct?

A. That is correct.

Q. Now, the initials at the end of each paragraph, those are the initials of the person who dictated the memorandum to the stenographer?

A. Correct.

Q. I have also handed to you, Mr. Donaldson, Exhibit No. 125. Can you state what that document is, please?

A. This is a financial statement of Hans Forster dated September 30, 1945.

Q. And is it signed, likewise, by Mr. Forster?

A. It is signed by Mr. Forster.

Q. That date is December 31, is it not?

A. Excuse me. This is dated September 30. Did I say December? [102]

Q. September 30th?

September 30, 1945.

Q. And that is likewise signed by Mr. Forster?

A. That is right.

Q. Does it contain pencilled notations, likewise?

A. Correct.

Q. And by whom are those pencilled notations entered? A. By our bank credit department.

(Testimony of Frank B. Donaldson.)

Q. Subsequent to the time the bank received the document? A. That is right.

Q. From whom did the bank receive this document? A. I cannot answer.

The Court: You mean you do not know?

The Witness: Excuse me. I do not know.

Q. (By Mr. Maxwell): Do you know when it was received by the Bank?

A. This particular statement bears no information on that, on the date received.

Q. Can you state the approximate date by which it was received in the bank in view of its relative position in your files?

A. No, sir, I cannot answer that one.

Q. Now, I have handed you Exhibit No. 126.

Mr. Maxwell: Strike that.

At this time, I will offer No. 125 in evidence.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit No. 125 for identification may be admitted.

(Plaintiff's Exhibit No. 125 admitted in evidence.) [104]

* * * * *

Q. Now, Mr. Donaldson, I have handed to you Exhibits 121 to 125. Those exhibits are financial statements of Hans Forster at the end of the year 1949 and at the end of the year 1948, and February 29, 1948, on March 31, 1947, and on September 30, 1945.

(Testimony of Frank B. Donaldson.)

Did you discuss any of those net worth statements with Mr. Forster? [132]

A. It is a normal procedure to discuss statements with your borrowers as presented.

Q. Did you discuss each of these statements with Mr. Forster? A. That I cannot answer.

Q. Did you discuss any of these statements with Mr. Forster? A. Undoubtedly, I have.

Q. Which of the statements to your knowledge did you discuss with Mr. Forster?

A. Sir, I replied before I could not take each instrument in itself and be positive as to the statement in itself as to a discussion at each time.

Q. Do you have documents from which you can refresh your memory in that regard?

A. Specifically referring to each statement?

Q. Yes, sir.

(Whereupon, there was a long pause.)

A. On the December 31, 1949, statement——

Q. (Interposing) That is Exhibit No. 121?

A. 121, and on the March 31, 1947, which is Exhibit 124—those are the only two that I can positively identify as having discussed the financial statements. [133]

* * * * *

Q. (By Mr. Maxwell): Now, Mr. Donaldson, I believe that you stated that you discussed Exhibit No. 121, the 1949 financial statement of Hans Forster with Hans Forster?

The Court: Referring to 121?

Mr. Maxwell: Exhibit 121, yes, sir.

(Testimony of Frank B. Donaldson.)

Q. (By Mr. Maxwell continuing): Is that correct? A. That is correct.

Q. When did you have that discussion with Mr. Forster? A. On April 6th, 1950. [136]

The statements were discussed with L. Hicks Taylor and Hans Forster.

Q. Was there anyone else present?

A. Our Mr. Strack.

Q. Who is Mr. Strack?

A. Phillip A. Strack, Chairman of our Executive Committee.

Q. What bank?

A. The Peoples National Bank.

Q. Did you at that time discuss any of the previous financial statements which had been submitted by Mr. Forster? I believe those are Exhibits Nos. 122 to 128. I will hand those to you, if you would like to have those documents.

A. I do not believe we referred to previous statements at that time.

Q. Did you have the previous statements available during that discussion?

A. They were not present at the interview.

Q. What was the occasion for the discussion?

A. Simply to review the financial statements as of December 31, 1949,——

Q. What was the purpose of the discussion?

A. (Continuing with preceding answer) ——and to attempt to satisfy the National Bank Examiners by [137] completing a statement, as they call it,

(Testimony of Frank B. Donaldson.)

in the name of Hans Forster, showing his assets and liabilities combined.

Q. Now, I believe that you are referring to our Exhibit No. 121, is that right? A. No, sir.

Q. What exhibit are you referring to? What financial statement are you referring to?

A. It was a statement completed by the writer during 1950 combining the exhibit 121 of December 31, 1949, with his home, and other assets which were not part and parcel with this particular statement.

Q. Do you have that statement?

A. (Witness hands document to counsel.)

Q. Is that the statement to which you have reference?

A. No, sir. It was the statement completed. The figures as appeared on Exhibit 129 was the breakdown after the statement was taken.

Q. I see. Do you have then a statement that you prepared?

A. I am trying to find it, sir. It should be here, somewhere.

The Court: You used the words "prepared by the writer." You mean prepared by yourself?

The Witness: Prepared by myself, yes, sir. [138] I keep referring to credit files.

Mr. Maxwell: While the witness is examining his files, I wonder if we might have permission to pass exhibits 132 and 133 to the Jury?

The Court: You may.

(Whereupon, exhibits were handed to the Bailiff and then to the Jurors.)

(Testimony of Frank B. Donaldson.)

The Witness: I have it here, sir. It was in the wrong file.

Mr. Maxwell: I see you have a memorandum attached to that. If you would detach the memorandum.

(Whereupon, the witness separated papers and returned papers to counsel.)

Mr. Maxwell: I ask that this document, denominated at the top, "Financial Statement of Hans Forster as of date 12-31-49" be marked as Government's Exhibit next in order, marked for identification.

The Clerk: Plaintiff's Exhibit 134 marked for identification.

(Plaintiff's Exhibit 134 marked for identification.)

Q. (By Mr. Maxwell): I have handed you, Mr. Donaldson, Exhibit No. 134. I will ask you to identify that document, if you can, sir. [139]

A. This is a financial statement for Hans Forster, as of December 31, 1949, which was prepared by myself and signed by Hans Forster.

Q. When was that statement prepared, sir?

A. On April 6th, 1950.

Q. April 6th, 1950? A. Right.

Q. Where did you secure the information to make this statement?

A. In my interview with Mr. Forster.

Q. Secured it from Mr. Forster?

A. Correct.

(Testimony of Frank B. Donaldson.)

Mr. Maxwell: We will offer Exhibit 134 into evidence at this time.

Mr. Griffin: No objection.

Mr. Keesling: No objection.

Mr. LeSourd: No objection.

The Court: Exhibit 134 for identification may be admitted.

(Plaintiff's Exhibit 134 admitted in evidence.)

Mr. Maxwell: Your Honor, at this time, I would like permission to pass this document to the Jury. I would like to adduce further testimony with respect to it, however, and ask that proceedings be suspended until [140] examination of the document is had.

The Court: Do you wish to pass it at this time?

Mr. Maxwell: Yes, your Honor.

(Whereupon, document was passed to the Jurors.)

The Court: Have you any matters that could be marked, or anything like that, with this witness?

Mr. Maxwell: No, your Honor; I have not.

Q. (By Mr. Maxwell): Do you have Exhibit No. 121? A. Yes, sir; 121 and 124.

Mr. Maxwell: May I have both of them?

(Whereupon, documents were handed to counsel by the witness.)

Mr. Maxwell: Also, your Honor, I would like to request permission to show exhibits Nos. 121, 124, 122, 125, 127, 123, 128, and 126 to the Jury, at this time, being financial statements.

The Court: Those have all been admitted?

(Testimony of Frank B. Donaldson.)

Mr. Maxwell: Yes, sir.

The Court: You may.

(Whereupon, exhibits were handed to the Jurors.)

(Whereupon, there was a long pause.)

The Court: There should be some of those that you are not using. If the Bailiff would take one and [141] start with alternate No. 1, so that we can save a little time, if there are some that have more than one. I am suggesting that you sort of divide these so that they come down the one way and if two can look at one at the same time, we may save a little time.

(Whereupon, there was a long pause.)

The Court: Whenever all jurors have seen one exhibit, if you will hand it to the Bailiff.

(Whereupon, there was a long pause.)

The Court: I am going to suggest, most of you Jurors have seen some of the exhibits, have you not? I am going to suggest, Mr. Maxwell, that you proceed, and the rest of you can look at them, if you wish, while listening to the testimony.

Mr. Maxwell: Your Honor, may I request the examination be delayed until I get Exhibit 121? That has not been returned yet.

The Court: 121, is that the one you have, Mrs. Bailey?

Juror Number Eight: This is 121, your Honor.

The Court: You may continue to observe it.

(Whereupon, there was a brief pause.) [142]

Q. (By Mr. Maxwell): Mr. Donaldson, I have

(Testimony of Frank B. Donaldson.)

handed you Exhibits No. 121, the net worth statement of Hans Forster at the end of December 31, 1949, Exhibit 124, the net worth statement of Hans Forster as of March 31, 1947, and No. 134, which you have stated to be the net worth statement of Hans Forster as of December 31, 1949, which you prepared. A. Right.

Q. Now, you have mentioned discussion with Mr. Forster during which this document was prepared on April 6, 1950.

Where did that discussion take place?

A. In the Peoples National Bank.

Q. Can you specify the place a little closer; in your office, perhaps?

A. In my office, my desk.

Q. What time of the day was this?

A. I do not know, sir. I do not recall.

Q. Now, you have stated that you prepared Exhibit 134 during that conference, is that right?

A. That is correct.

Q. Now, what documents in addition to Exhibit 134—to what documents did you refer during your discussion at that time?

A. To Exhibit No. 121. [143]

Q. Exhibit No. 121, which is what?

A. The financial statement as of December 31, 1949, showing Mr. Forster's investment, or net worth, in his various enterprises.

Q. When did the bank receive that document?

A. The statement is not so marked.

(Testimony of Frank B. Donaldson.)

Q. Well, did the bank receive that prior to April 6th, 1950? A. Apparently so, yes.

Q. And you had that available at that time?

A. That is right.

Q. It was already in your file?

A. That is correct.

Q. Were there any other documents to which you had reference during that conference?

A. I do not believe so.

Q. Did you not refer to the earlier net worth statements, 122 to 128, inclusive?

A. Not at that particular time, no, sir.

Q. Referring to Exhibit 134, the net worth statement which you prepared, does that contain Hans Forster's signature? A. It does.

Q. Did he sign that document in your presence?

A. Yes, sir. [144]

Q. When was that signed?

A. On April 6th, 1950.

Q. At the termination of your discussion?

A. Well, during the discussion.

Q. To what extent did Mr. Taylor participate in the discussion, if at all?

A. On this particular statement?

Q. Yes, sir.

A. No discussion at this time.

Q. You stated he was present?

A. Prior to this particular statement being completed, if I stated so, it is incorrect. At the time this particular document, 134, was prepared by me, Mr. Taylor was not present.

(Testimony of Frank B. Donaldson.)

Q. He was not present? A. No, sir.

Q. Now, you have, previous to this time, stated Mr. Taylor was present on April 6th, 1950. It is my understanding now he was not present at that discussion, is that correct?

A. When this statement was prepared, he was not present at my desk, no.

Q. Well, was he present at your bank in company with Mr. Forster on April 6th, 1950, regardless of the preparation of that document? [145]

Mr. LeSourd: I will object to the form of that question. I think what counsel means is at some time other than the preparation of this document.

Mr. Maxwell: I believe that was my question.

Mr. LeSourd: You said "regardless."

The Court: Do you wish to restate the question?

Mr. Maxwell: Yes, your Honor.

Q. (By Mr. Maxwell continuing): On another occasion on April 6, 1950, was Mr. Taylor present?

A. Yes, when Document 121 was delivered to the bank, he would be with Mr. Forster at that time.

Q. That, you stated, was prior to April 6th, 1950? A. That is correct.

Q. Was Mr. Taylor present at the bank at all at any time on April 6th, 1950?

A. I do not believe so.

Q. Now, is there a difference between Exhibit No. 134, the net worth statement which you prepared, and Exhibit No. 121, the 1949 financial statement which was delivered to the bank?

A. Yes, sir.

(Testimony of Frank B. Donaldson.)

Q. What is that difference?

A. Do you want it in even dollar amounts?

Q. I wish what differences there are. I wish you would state what they are.

A. Well, the financial statement as submitted, the typed one, is Exhibit No. 121 as of December 31, 1949, and shows his net worth of $781,761.72.

The one prepared by myself, Exhibit No. 134, as of December 31, 1949, shows a net worth of $968,-830.88.

Q. Then there must be some difference, Mr. Donaldson, in the items making up the totals that you have there? A. That is correct.

Q. What items are different, or have been changed or added or subtracted?

A. In addition to the items as appearing in Exhibit No. 121, there is real estate consisting of his home and a farm valued at $44,000; some United States Government Bonds, fifty thousand, and cash on hand or in banks, $87,000? * * * * * [147]

Q. What are the total assets of Hans Forster shown on Exhibit 134, the item which you prepared, the net worth statement which you prepared?

A. Will you repeat the question, please?

Q. What is the total of the assets as shown on Exhibit 134, which is the net worth statement which you prepared? [155] A. $968,830.88. * * * * *

Cross Examination * * * * *

Q. (By Mr. Griffin continuing): Mr. Donaldson, when you made inquiry of Mr. Forster as to

(Testimony of Frank B. Donaldson.)

his financial affairs on these statements, as, for example, 121, 122, 123, and 124, did he not generally say he didn't know anything about them and refer you to Hicks Taylor?

A. He was always anxious to have Mr. Taylor along [186] with him to assist him in discussing the statements.

Mr. Maxwell: May it please the Court, I ask that the witness be directed to answer the question.

Mr. LeSourd: I move to strike on the grounds not responsive.

The Court: The question, whether it is responsive or not, is for the Jury. I don't think it should be stricken. If he can give a more specific answer, he should do so.

Q. (By Mr. Griffin): Will you give any detail you can, any answers that are specific?

Mr. Maxwell: May I ask that the question be repeated?

(Whereupon, second preceding question was read by the reporter.)

The Court: That is the question; now the answer.

(Whereupon, preceding answer was read by the reporter.)

The Witness: I believe that is too general a statement for me to attempt to answer.

Q. (By Mr. Griffin continuing): Would you say what the conversation was? [187]

A. There have been times——

Mr. LeSourd: (Interposing) Just a moment.

(Testimony of Frank B. Donaldson.)

Which conversation? I will object to that question, because it deals apparently with four separate conversations with four separate financial statements.

Mr. Griffin: If the Court please——

The Court: (Interposing) As I understand——

Mr. Griffin: (Continuing) If the Court please, may I make a statement first, just for a moment? I don't assume that any counsel at the defense table can object to any question asked by Counsel. That is the burden of the Government in this case. Unfortunately, we are defending an entire case with three defendants, but I don't presume for a moment that I can object to any questions that Mr. LeSourd asks any Government witness in this matter. If I can, I am perfectly happy to do it, but this is the Government's case, and I am on cross-examination of the Government's witness.

Mr. LeSourd: If your Honor please, as long as Mr. Griffin raised that question, I move the Court that the various Defendants in this case, in view of the conflict of interest that is evident, be permitted to object to questions asked by counsel for the other defendants, and be permitted to cross-examine the witnesses of the other [188] defendants.

Mr. Moriarty: The Government has no objection.

The Court: Well, cross-examination, I take it, may be only permitted in that instance if there is some antagonism on the part of the witness. In other words, if the witness is an unfriendly witness.

(Testimony of Frank B. Donaldson.)

Mr. LeSourd: Well, no, I am not claiming that at all, your Honor, but since the Defendants have adverse interests, we have the right to see that the questions are properly put, and the evidence is brought out in an orderly way, so that we can object.

The Court: Well, it would seem to me in those instances where the evidence may have some particular bearing on the particular defendant——

Mr. LeSourd: (Interposing) Yes, which it may.

The Court: (Continuing) ——it sounds reasonable that that might be permitted, and I would say however, I don't think that, generally speaking, that objections can be made in that fashion, and that more or less of a relationship to the particular question would have to appear.

Mr. LeSourd: If your Honor please, I am not prone to make objections in the trial of a lawsuit and have refrained, and will to do so, but I want to protect the rights of my client where we are opposed by another [189] defendant in this case as much as the Government.

The Court: Well, the Court, in announcing its ruling, will permit it, but does not thereby indicate that all questions on cross-examination by defendants will be subject to objection by other defendants; but you may, as you see fit, make objections and the Court will rule on them.

Mr. LeSourd: Very well.

The Court: As to the particular question here, as I understand it, the issue involved is not a par-

(Testimony of Frank B. Donaldson.)

ticular conversation; rather, it is the nature of conversations over a period of time, and, therefore, I think the very nature of it cannot call for the same specific answers, and, therefore, the Court would overrule the objection, and, of course, on your examination, if it becomes necessary to go further than ordinarily you might go in your examination, you may do so.

Mr. LeSourd: Very well. [190]

* * * * *

Q. (By Mr. Griffin continuing): That would be when you would inquire, sir, of Hans Forster as to the content, or some question in regard to the financial statements referred to in, as for example, Exhibits 121 to 125. [191]

A. We would depend upon Mr. Taylor explaining and describing the different items in the financial statement. We relied upon him very, very much on financial statements.

Q. Did you, during these years, and I think you have said that when you make this review over the week-end, that you will find that Mr. Forster and Mr. Taylor were in the bank many times together?

A. That is quite a number of times, yes, sir.

Q. Did you find during these years of this acquaintanceship with Mr. Forster that he was able to even read a financial statement? By reading, I mean to understand.

A. I do not believe he understood a financial statement really, no.

Q. Now, the financial statements, and using 122

(Testimony of Frank B. Donaldson.)

for example, bears the name, the signature, Hans Forster. What was the purpose in having the statement signed by Mr. Forster from the bank's standpoint?

A. It is required from banking procedure to have all statements submitted to be signed, and the National Bank Examiners also require that statements be signed.

Mr. Griffin: 121, I wonder if you have that?

(Whereupon, the clerk handed an exhibit to Mr. Griffin.) [192]

Mr. Griffin: Thank you.

Q. (By Mr. Griffin): Now, Exhibit 121 is the Hans Forster financial statement, December 31, 1949. The Jury, I think, have examined both this statement and 129.

Mr. Griffin: Is that correct?

Mr. Maxwell: 129 was prepared by the bank.

Mr. Griffin: Yes.

Mr. Maxwell: Yes. It is not in evidence.

Mr. Griffin: Then 134. There is another financial statement. I have it. I have it here.

Q. (By Mr. Griffin continuing): Now, I believe that the Jury have examined briefly Exhibit 121, which is the Hans Forster financial statement, December 31, 1949, and Exhibit 134, which is the financial statement that you made from the financial statement; is that correct?

A. That is correct.

Q. Now, when—I think you will have to have this in front of you to follow me. When Exhibit 121

(Testimony of Frank B. Donaldson.)

came into your possession, it showed, did it not, in the form it came in, total assets $681,761.68?

A. That is correct, 62.

Q. 62? A. That is correct. [193]

Q. Actually, the physical computation of the items—if I may have it for a moment—this is the figure $681,761.62—actually, the actual addition of those items in that statement is off $100,000?

A. Twenty cents.

Q. (Continuing) Twenty cents, isn't it; is that correct? A. That is correct.

Q. So that the actual assets shown on this statement, Exhibit 121, is $781,761.72 rather than $681,000? A. That is correct.

Q. That difference, you, of course, picked up in your preparation of Exhibit 134?

A. That is correct.

Q. To your knowledge, did Mr. Forster ever prepare, himself, any one of these statements?

A. Not to the best of my knowledge.

Q. And, to the best of your knowledge, who did prepare them?

A. We assumed that Mr. Taylor prepared all statements.

Q. Then, in Exhibit—in preparing Exhibit 134, you also—134, was it prepared—prepared by you?

A. That is correct. [194]

Q. Signed by Mr. Forster; this is April 6, 1950, and it shows total assets column $968,830.88 rather than this six hundred thousand dollars and something; so that to reach that, you added, if I under-

(Testimony of Frank B. Donaldson.)

stand your testimony, this error in addition of one hundred thousand dollars and ten or twenty cents?

A. That is correct.

Q. You added his home? A. Yes.

Q. And contiguous property?

A. That is right.

Q. And the farm? A. That is right.

Q. And certain cash in savings accounts?

A. That is correct.

Q. Now, in reaching a statement for Hans Forster did you from time to time have to review the statements of his various enterprises?

A. Did we have occasion to review them from time to time?

Q. Yes. A. Yes, sir.

Q. That would include, would it, Issaquah Dairy; right? A. Correct. [195]

Q. Alpine——

A. (Interposing) Issaquah Creamery.

Q. Issaquah Creamery? A. Yes.

Q. I can't even keep them straight. Alpine Dairy? A. Yes, sir.

Q. Alpine Ice Cream? A. Yes, sir.

Q. Perhaps Daisy Ice Cream at one time?

A. At one time.

Q. Arctic Farms, is it?

A. Arctic Gardens.

Q. And perhaps Simonson and Forster?

A. Yes, sir.

Q. In Renton Ice Cream and, incidental to that, some other concern down there?

(Testimony of Frank B. Donaldson.)

A. That is right.

Q. And Puyallup Creamery and something down there? A. Yes.

Q. Finstad? A. Finstad and Utgard.

Q. And, to reach any true evaluation——

Mr. Griffin: Strike that. [196]

Q. (By Mr. Griffin continuing): Would you find conditions that at times in reviewing these statements—of course, the statements of, let us say, Issaquah Creamery—that is a corporation—would be entirely separate from the individual?

A. That is correct.

Q. Would you find occasions where Issaquah Creamery might be substantially indebted to Alpine, or Alpine to Issaquah? A. That is right.

Q. And to determine just what the assets, actual assets, of Mr. Forster individually were, of course, when you dealt with the Issaquah Creamery you were dealing with stock of a corporation that he owned, is that right?

A. That is correct.

Q. And with Alpine, it was an individual; that was Mr. Forster? A. That is right.

Q. But with some others, it was joint enterprise on stock. Now, if Issaquah Creamery—and Mr. Forster owned all the stock in that—did he not?

A. It is my understanding, except possibly qualifying shares.

Q. Qualifying shares, but if the statement of—[197] financial statement of Issaquah Creamery showed an indebtedness to either Alpine or to Mr.

(Testimony of Frank B. Donaldson.)

Forster, and if Alpine in turn showed an indebtedness to another corporation of which Mr. Forster owned 100 per cent or 60 per cent of the stock, or whatever it may be, you had to pull out those accounts between these various enterprises to cut down the actual assets and values, didn't you?

A. We would eliminate——

Mr. Moriarty: (Interposing) Just a moment.

A. (Continuing) ——inter-company accounts.

Mr. Moriarty: Just a moment, if your Honor please. I object to that, your Honor, as not material here what the witness did, if it shows somewhere that Mr. Forster or Mr. Taylor had knowledge of this practice.

The Court: Objection overruled.

Q. (By Mr. Griffin): You did that?

A. We did in our own analysis of analyzing the credit.

Q. For example, if Issaquah Creamery—if Alpine owed Issaquah Creamery fifty thousand dollars, that was a liability of Alpine, and an asset of Issaquah? A. That is right. [198]

Q. But, inasmuch as Mr. Forster owned 100 per cent of the stock of Issaquah and was the sole proprietor of Alpine, it washed itself off as an asset one way or another, didn't it?

A. We traded in that manner, yes, sir.

Q. Did you find in your dealings with Mr. Forster that he had even any comprehension of those kind of matters in his various enterprises?

A. I do not believe he did.

(Testimony of Frank B. Donaldson.)

Q. Do you know upon whom he depended for his —all of his accounting advice?

A. We believe that he depended upon L. Hicks Taylor.

Q. And did you, as the bank, depend upon L. Hicks Taylor representing Forster in those matters?

A. On financial statement matters, yes, sir.

Q. Now, you were interrogated, you will recall, about a loan by the bank to Mr. Forster, I believe of $150,000, the funds of which he used to buy Government Bonds which in turn were left with the bank as collateral for the loans?

A. Yes, sir.

Q. I will ask you if it was not a general policy of the banks of the United States, yourself included, by the National Banking System, to make those [199] loans to customers in the aid of the Government selling United States Bonds?

A. They did assist the Government through the purchase of these bonds, that is correct.

The Court: The question was whether it was a custom. Wasn't that the question?

Mr. Griffin: I should have said "practice", rather than "custom", I think.

Q. (By Mr. Griffin): Is that correct?

A. Yes, that is right.

Q. And is it not a fact that your bank at about the time of your loan of $150,000 to Mr. Forster loaned $50,000 to L. Hicks Taylor to purchase $50,000 in Government Bonds which the bank in turn

(Testimony of Frank B. Donaldson.)

held as collateral? A. That is correct.

Q. Do you know Mr. Forster received his advice to purchase those bonds from L. Hicks Taylor?

Mr. LeSourd: If you know.

Mr. Griffin: My question was: "Do you know?"

A. It would just be hearsay, so I could not say definitely "yes". * * * * * [200]

Q. (By Mr. Griffin): During the period of time, 1945 to 1949, about which you were interrogated by counsel, and Mr. Forster and Mr. Taylor being in the bank on these matters, I will ask you if it is not a fact that you learned at that time of Mr. Forster—learned at that [205] time from Mr. Forster, in the presence of L. Hicks Taylor, of that account, savings account 198, in the Washington State Bank? * * * * * [206]

Q. (By Mr. Griffin): Do you have any date in mind in connection with the question I asked?

A. Yes, sir.

Q. Can you give about that approximate date?

A. It would be during 1949, the fall of 1949 as I would recall.

Q. And did you learn at that time about this account in the Washington State Bank and that information coming to you from Mr. Forster in the presence of Mr. Taylor?

A. The statement was made by Mr. Forster——

The Court: (Interposing) Just a minute. [207]

Mr. Griffin: The question can be answered "yes" or "no". You can explain, if the Court will permit.

The Witness: Yes.

(Testimony of Frank B. Donaldson.)

Q. (By Mr. Griffin): Now, do you want to make any further explanation?

A. There was not a differentiation between savings at Washington State Bank or Peoples National Bank. It was just a general impression that he had this amount of money in the two savings accounts which he was willing to put into the building program. * * * * * [208]

Cross Examination

Q. (By Mr. LeSourd): Yes, thank you.

Now, with regard to the conversations in the fall of 1949, Mr. Donaldson, where you said something about a general impression that Mr. Forster had money in the savings account, I simply want to get the facts straightened out as I believe it is the fact that you told me a day or so ago that, to the best of your recollection, there had been no discussion of the savings account at a time when Mr. Taylor was present; wasn't that right?

A. No, sir; you asked me if I had—if I knew if Mr. Taylor had any access to our conditions of applying to the savings account in our bank.

Q. I see; well, I must have misunderstood you then at the time.

Now, you state that it was a general impression that Mr. Forster had this money in these two savings accounts. You are speaking of the impression you gained at the time?

A. He made the statement. [220]

Q. Mr. Forster?

(Testimony of Frank B. Donaldson.)

A. Mr. Forster made the statement that he had savings in Issaquah and in our bank, at Peoples National Bank of Washington, which he would use to put the necessary financing together, along with his Government bonds, if necessary, on the new building for the Alpine Ice Cream Company. [221]

* * * * *

Q. However, speaking of Mr. Forster's personal assets now, as distinguished from the business assets [235] when on April 6, 1950, you made up Exhibit 134, which contains Mr. Forster's personal assets as well as his business assets, the figures on the personal assets you got from Mr. Forster himself, didn't you? A. That is correct.

Q. So that Mr. Forster was not relying on Mr. Taylor with respect to the figures on his own personal assets?

A. These figures were given to me by Mr. Forster so I am assuming he is the one that would be responsible for the figures as given to me at that time. * * * * * [236]

Q. Yes; did you follow the practice of sending to Mr. Forster periodically, I think monthly, statements as to the status of his various loans and guarantees he had made? A. That is correct.

Q. And those statements were sent to Mr. Forster at Issaquah, were they?

A. At Issaquah, yes.

Q. You didn't send those to Mr. Taylor?

A. No; no, not to Mr. Taylor. [240]

* * * * *

(Testimony of Frank B. Donaldson.)

Q. You testified Friday, I believe, that you believed Mr. Forster did not understand financial statements. Is that your testimony today?

A. Excuse me; I would like to have my testimony read back, if I may, because I believe I added some remarks to the fact that he did not.

Q. Well, supposing you tell us then in that connection now what your belief is with regard to Mr. Forster's understanding?

A. My belief is that he depended entirely—upon the different items that made up a financial statement, he depended upon Mr. Taylor getting those facts and figures together for him in statement form, and if we at any time asked him as to a comparison between [245] a previous statement and this one being submitted that he would have to depend upon Hicks Taylor explaining the difference in them, whether it was up or down, or whatever the progress might have been.

Q. In other words, he depended on Mr. Taylor to go back to the books and records of his corporation that Mr. Taylor had, and explain the difference? A. That is correct.

Q. On the books? A. That is correct.

Q. But now, with regard to Mr. Forster's own understanding, then is it your testimony today that Mr. Forster did understand a financial statement when he read it?

A. With Mr. Forster looking at a financial statement where net worth is shown in figures, I can't deny that he should recognize a net worth figure

(Testimony of Frank B. Donaldson.)

when he would see it. I say, when you turn around and break the different items down comprising those statements, then he had to have assistance in being able to give satisfactory answers as to what the items represented.

Q. But where the net worth statement was broken down into various items such as cash, accounts receivable, accounts payable, inventory, equipment, [246] is it your testimony that he couldn't understand those items?

A. To the extent that he depended upon others compiling those figures and giving them to him as a completed statement.

Q. Well, you are speaking now that perhaps he would depend on those figures coming from the books that were kept as to the amounts involved, but I am asking you, Mr. Donaldson, whether in your belief, which I think was the word you used on Friday, whether Mr. Forster could understand the nature of those items that were listed on these financial statements?

A. He would have to have some knowledge of the existence, somehow.

Q. I am not asking you whether he would have to have, but whether in your belief he did have.

A. Not a complete understanding of his true financial picture, no.

Mr. LeSourd: May I have 124?

(Whereupon, document was handed to Mr. LeSourd by the Clerk.)

(Testimony of Frank B. Donaldson.)

Q. (By Mr. LeSourd): Mr. Donaldson, I would like to find out—first, let me ask you this: You believe—it is your belief then that he did not have a complete understanding [247] of the meaning of the various items that were listed on the financial statement? A. Not completely.

Q. Not completely? A. No, sir.

Q. And speaking of that, you were referring to the various statements introduced here for his business during these years, were you?

A. That and others comprising our credit files over a period of years.

Q. But you are referring to this type of financial statement? A. That is correct.

Q. I am anxious to find out just what in your belief Mr. Forster did not understand about—completely about—these financial statements. I am referring to Plaintiff's Exhibit 124, which is the March 31, 1947, financial statement. The first item is cash on hand. Did he understand that completely? A. I am assuming that he would.

Q. I am not asking you to assume, but I am asking you to give us your belief as to what he did understand.

A. I believe he did understand cash on hand, yes.

Q. And the accounts receivable, do you believe he [248] understood that to be the amount owed?

A. To the extent that it was submitted to him as the accounts receivable, I am assuming he would take it as being right.

(Testimony of Frank B. Donaldson.)

Q. By that, you are simply referring to the figure itself, whether the figure was that figure or some other figure; he wouldn't be expected to bear that in mind, would he? A. I don't believe so.

Q. But, as to the nature of the item Accounts Receivable, he certainly understood that?

A. As accounts receivable, as an expression, yes.

Q. All right, inventory, do you think he understood what an inventory was?

A. I am assuming he would.

Q. And United States bonds, do you think he understood that?

A. I am sure he understood that item.

Q. And trucks? A. That is right.

Q. And equipment, the same, he knew what equipment was?

A. Yes, he would know what his equipment was.

Q. And buildings and improvements, he understood [249] that item, didn't he?

A. I am assuming.

Q. And real estate, did he understand that?

A. Sir, I don't know what I am being cross-examined—certainly, the items as appearing on the statement, he can read and understand what they are. The dollar amount opposite is what I am trying to imply, that I do not believe he understood those figures completely.

Q. Mr. Donaldson, you testified on Friday, I believe, that Mr. Forster, in your belief, did not understand these financial statements, and I simply wanted to bring out, and I think you have brought

(Testimony of Frank B. Donaldson.)

out, that he did understand these items that went on these financial statements.

A. The man would have to be ignorant if he didn't know a little bit.

Q. And Mr. Forster wasn't ignorant, was he?

A. Not to that extent.

Mr. LeSourd: Yes, thank you. That is all. [250]

Redirect Examination * * * * *

Q. (By Mr. Maxwell continuing): Did you know of a savings account in Issaquah at the time you made out Exhibit 134?

A. We knew that Mr. Forster did have a savings account at Issaquah, yes.

Q. Did you ask him how much was in the account?

A. Not at this particular time, no, sir.

Q. Do you know whether or not that is included in [254] that item? A. I do not know.

Q. I will hand you Exhibit 55, which has been identified as the ledger sheet of Account 198 and ask you to state the balance as shown in that account on December 31, 1949, which is, as I understand, the date as of which Exhibit 134 was prepared? A. As of December 31, 1949?

Q. Yes, I believe that is the date. Is that the date as of which Exhibit 134 was prepared?

A. Yes, sir.

Q. Yes; and will you give us the balance in account 198, the savings account at Issaquah, as of that date?

(Testimony of Frank B. Donaldson.)

A. Well, the amount is shown by the Issaquah record here as Exhibit No. 55, and the deposit balance would be $93,974.98.

Q. Now, I will hand you Exhibit No. 89 and ask you what that document is?

A. This is a savings account ledger sheet,—correct me—it is a certified copy of a ledger sheet of Peoples National Bank, Exhibit No. 89, in the name of——

Q. (Interposing) Yes, that is the savings account of Mr. Forster at your bank? [255]

A. (Continuing) ——Hans and Evelyn Forster.

Q. Yes; can you find the balance in that account in your bank as of December 31, 1949?

A. The balance, according to this record, is $82,898.52.

Q. Now, can you say whether or not account—the balance in Account 198 is included in the figure Cash on Hand of Exhibit 134, which is listed at $87,000?

A. Well, from these figures, it wouldn't balance out. * * * * * [256]

Recross Examination

Mr. Griffin: May I read the memo?

The Court: You may.

Mr. Griffin: Exhibit A-1, February 12, 1948, P.A.S.

Q. (By Mr. Griffin): That is Phillip A. Strack?

A. Phillip A. Strack, that is correct.

(Testimony of Frank B. Donaldson.)

Mr. Griffin: "Has had several discussions with Hans Forster and his accountant, Hicks Taylor, over financing of a new ice cream plant on their present property at 4058 Rainier Avenue. It is anticipated that the plant and equipment will cost approximately $200,000 and while they originally asked for a maximum loan they have now agreed that they can get by with a mortgage loan of $100,000. We have been supplied with financial statements as of December 31, 1947 from Issaquah Creamery Company, Incorporated, Alpine Dairy, [261] Apex Farms, Incorporated, and Finstad and Utgard, Incorporated.

Hans Forster has with the Washington State Bank, Issaquah, approximately $100,000 on deposit. He has better than $60,000 on deposit in our savings account. He owns free and clear $50,000 in United States Treasury Bonds and has securities with a market value of approximately $24,000. He will sell his securities and use some of his reserves to cover the difference between $100,000 mortgage and the cost of the building. We have asked that he give us the name of the contractor showing us the firm bid and other details of a final contract. The application was discussed at our executive directors' committee on February 10, and they approved our loaning one hundred thousand dollars, payable twenty-five thousand dollars a year, secured by real estate and chattel mortgage on the new plant. We have attempted to discourage Hans Forster from building at this time, but he has a number of logical

(Testimony of Frank B. Donaldson.)

arguments, and we finally committed to go along on the [262] above basis because of our past experience with Hans Forster and on the strength of his financial condition. F.B.D."

Q. (By Mr. Griffin): That is yourself?

A. That is correct.

Q. So that on February 12th, on or about the period February 10 to February 12, 1948, Hans Forster in the presence of Hicks Taylor advised you and your bank that he had $100,000 on deposit in the Washington State Bank at Issaquah, is that correct? A. That is correct. * * * * * [263]

Direct Examination

The Court: The question is, how many times was he in the bank to the best of your recollection from [269] the information you have, Mr. Donaldson, between the dates December 31, 1944, to December 31, 1949?

A. According to the records from our credit file from the period of December 31, 1945 to December 31, 1949——

Q. (By Mr. Maxwell continuing): 1944, I believe it would be.

A. Excuse me; 1944 through 1949, Mr. Forster discussed items of banking in our credit files 68 times.

Q. And, on those occasions, how many times was he accompanied by Mr. Taylor?

A. According to our files, or the comment, Mr. Taylor was with him 13 times.

Mr. Maxwell: No further questions. * * * * *

RAYMOND J. SCHNEIDER

a witness called for and on behalf of the Plaintiff, upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name and the spelling of your name, please.

The Witness: Raymond J. Schneider.

The Clerk: S-c-h-n-e-i-d-e-r (spelling)?

The Witness: Yes, sir.

Mr. Obenour: Would you state your name, please, for the jury?

The Witness: Raymond J. Schneider.

Q. (By Mr. Obenour): And where do you live, Mr. Schneider? A. Renton, Washington.

Q. And what was your occupation?

A. As what time?

Q. What is your occupation now?

A. President of the South End Beverage Company.

Q. And have you ever been affiliated with Renton Ice and Ice Cream Company? A. Yes, sir.

Q. And when would that—do you still have such a relationship?

A. I had until the name was changed of the company.

Q. And what was your position with the Renton Ice and Ice Cream? A. President and manager.

Q. And when was the name of the company changed? A. January, 1953, I believe.

Q. And is that company still in evidence?

A. Yes, sir.

(Testimony of Raymond J. Schneider.)

Q. And you are presently affiliated—what is the name of it—South End?

A. Beverage Company.

Q. And who else is in that company with you?

Mr. Griffin: Objected to as immaterial.

The Court: I can't tell. If you state it is material, Mr. Obenour, the Court will have to act on your representation.

Q. (By Mr. Obenour continuing): Does Mr. Forster have any interest in the South End Beverage Company? A. Yes, sir.

Q. And is this the same company that was formerly Renton Ice and Ice Cream, and is now South End Beverage? A. That is right.

* * * * * [279]

Q. Now, what was your practice then as to Issaquah Creamery? How—would you make purchases from them? A. Yes, sir.

Q. What would you purchase from them?

A. Ice cream mix, mainly. [299]

Q. How would those transactions be handled in the manner of keeping the account?

A. The driver would bring the mix, and give us an invoice upon it, and we would put it in the file. We might have three or four in a two-week period. Then we would get a statement from them, and I would check the purchase against the amount of the statement so that we knew it was correct and write a check which I mailed to the Issaquah Creamery and on the statement record the check number and the date it was paid.

(Testimony of Raymond J. Schneider.)

The Clerk: Plaintiff's Exhibit No. 200 marked for identification.

(Plaintiff's Exhibit No. 200 marked for identification.)

Q. (By Mr. Obenour): I hand you what has been marked for identification as Plaintiff's Exhibit 200 and ask if you can identify those, please?

A. They all seem to be statements with invoices attached just as I have been telling. It was exactly that procedure. Here is the statement we got every two weeks and attached to it the invoices and shipments we would have in the two weeks.

Q. From what company?

A. Issaquah Creamery, mainly. There is one in here, I [300] believe, from someone else. That is from—this one says—Highland Drugstore. I don't know whether it is in regard to one of the statements or not. There is the amount for that. This is 3-23-44, Highland Drugstore, Renton Highlands, March 20th, a list of syrups that we sold them.

Q. Was that included in the account to Issaquah? A. $193.44. I don't see it on there.

Q. That was an inadvertence?

A. Yes, I think so.

Mr. Obenour: May we remove that, if the Court please? It was an inadvertence.

The Court: It hasn't been admitted. You may remove it, if you wish. Do Counsel wish to see it before it is removed?

Mr. Griffin: No, your Honor.

Mr. LeSourd: No, your Honor.

(Testimony of Raymond J. Schneider.)

Q. By Mr. Obenour): The rest of them were what then?

A. They are all purchases and payments, Issaquah Creamery, for Mix.

Q. And the check is the check that paid that invoice, is that correct, on that statement?

A. That is right. I believe they all correspond, so far as I can see, yes.

Mr. Obenour: All right. May I have it, please? We offer 200, if the Court please.

Mr. Griffin: We have no objection.

* * * * * [302]

Q. (By Mr. Obenour): I hand you Plaintiff's Exhibit 199, sub A through [314] J, inclusive, and ask you to refer to your check register for the year 1945, particularly the month of April, 1945.

A. Yes, sir.

Q. Directing your attention to April 11, 1945, do you find an entry there pertaining to an item of two thousand dollars to yourself?

A. Yes, sir.

Q. And would you explain that transaction, please?

A. Yes. I drew two thousand dollars, for which I wrote a check to myself, and signed a note which showed payment—it was a note that I took as an advance for that year. I signed a note for it.

Q. And that was an advance on your own salary? A. Yes.

Q. Now, directing your attention to your books there for April 17, 1945, particularly as to checks

(Testimony of Raymond J. Schneider.)

3180, 3181, and 3182. What does your record show as to those entries?

A. You want check No. 3180 to start with?

Q. Right.

A. That is a check payable to myself.

Q. On what date, please?

A. On April 17th.

Q. And in what amount? A. $317.

Q. And what is check 3181? [315]

A. Check payable to Mazie R. Basket for $2,317.

Q. And 3182?

A. Check payable to myself for $1,158.50.

Q. And 3183?

A. Check payable to Mazie R. Basket for $1158.50.

Q. Who drew those checks?

A. I drew them.

Q. And who filled in the check register?

A. I did.

Q. And who made—what is the distribution? How was that charged up? A. Notes payable.

Q. Pardon? A. Notes payable.

Q. Notes payable? A. Yes.

Q. And who made that charge?

A. On the distribution side?

Q. Yes.

A. I think the office girl.

Q. Now, what were those notes payable; what was that in notes payable? Would you explain that transaction?

A. This was in April. Well, I would say that

(Testimony of Raymond J. Schneider.)

it was the balance of our salary—this is April—the year is what I wanted to make sure of. [316]

Q. Doesn't the books show all that?

A. This book is August 1, 1944, to May 26, 1945, so that this would be April in 1945.

Q. Now, did you have notes that you had received from the company at that time?

A. I think so.

Q. What were they for?

A. Balance of salary of 1944.

Q. And what was the note you had?

A. The note that I had?

Q. Yes.

A. Balance of salary for 1944.

Q. In what amount?

A. $317 if I am right; that is what this indicates.

Q. And who made the entry there?

A. The entry in the checkbook is made by me.

Q. And the distribution?

A. Office girl, I think.

Q. And who directed the manner in which they were to be entered? A. Mr. Taylor.

Q. Mr. Taylor entered it? A. Yes.

Q. Now, how did that enter into the note of two thousand dollars that you withdrew in April 11th?

A. This would appear to be the balance of my salary. I had drawn the two thousand. This would be the balance of it.

Q. For actual notes prepared?

A. I believe so.

(Testimony of Raymond J. Schneider.)

Q. And who signed them?

A. They would be signed by me and possibly somebody else.

Q. Do you have a recollection of such notes being made?

A. I have of some years. I wouldn't be sure about this year.

Q. How was this matter set up then as to these notes? A. How was it set up?

Q. Yes, how would they set up this system of writing notes to you and Mr. Basket?

A. If the balance of our salary was not paid at the end of the year, we received notes for the balance of the salary until we had money to pay them.

Q. For what reason did you receive notes at the end of the year?

A. Probably because there wouldn't be cash in the bank.

Q. So that if your cash was low, you would not pay off the balance of your salary at the end of the year? [318] A. Quite right, yes.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit No. 203 and ask if you can identify those, please?

A. They are three of the checks in question.

Q. Which three are those, please?

A. The first one is made to me that you hand me for $1158.50.

Q. What check number is that, please?

A. 3182; the second one is 3183, payable to Mazie R. Basket for $1158.50. The third one is 3181 pay-

(Testimony of Raymond J. Schneider.)

able to Mazie R. Basket for $2,317.00.

Mr. Obenour: I might offer them at this time, if the Court please.

Mr. Griffin: We have no objection.

Mr. LeSourd: We have no objection.

Mr. Keesling: No objection.

The Court: Exhibit 203 for identification may be admitted.

(Plaintiff's Exhibit No. 203 admitted in evidence.)

Mr. Obenour: I would read them to the Court at this time.

The Court: You mean to the Jury?

Mr. Obenour: Yes, if the Court please.

The Court: You may. [319]

Mr. Obenour: Check 3181, Renton Ice and Ice Cream Company, April 17, 1945, pay to the order of Mazie R. Basket, $2,317.00, Renton Ice and Ice Cream Company, and then the stamp protector of the same amount, Two Thousand Three Hundred and Seventeen Dollars, signed R. J. Schneider and Hans Forster, and directed to the Renton Branch of the Peoples National Bank and the endorsement on that is Mazie R. Basket.

3183 is a check, Renton Ice and Ice Cream Company, Renton, Washington, April 17, 1945, pay to the order of Mazie R. Basket, $1,158.50, signed R. J. Schneider, Hans Forster, and it is directed to the Renton Branch of the Peoples National Bank.

And 3182 is a check of the Renton Ice and Ice Cream Company of Renton, Washington, April 17,

(Testimony of Raymond J. Schneider.)

1945, pay to the order of R. J. Schneider, $1,158.50, signed R. J. Schneider and Hans Forster.

And Mr. Schneider's check, the last one, is endorsed R. J. Schneider, and bears the stamp endorsement of Pay to the Order of Issaquah State Bank, Issaquah, Washington, and Issaquah Creamery Company, Alpine Dairy Products, and Hans Forster.

And the check to Mrs. Basket in the amount of $1,158.50 bears the endorsement Mazie Basket and Issaquah State Bank, Issaquah, Washington, stamped endorsement, [320] Pay to the Order of Issaquah State Bank, Issaquah, Washington, Issaquah Creamery Company, Alpine Dairy Products, and Hans Forster.

Q. (By Mr. Obenour): Now, Mr. Schneider, would you please explain what happened to the check in the amount of $1158. and the check to Mrs. Basket in the same amount as to the matter of the *enforcement*?

Mr. Cox: If he knows.

The Court: I assume that he will not answer unless he knows.

A. I know what happened to mine.

Q. (By Mr. Obenour): What happened to yours?

A. I endorsed it and mailed it to Hans Forster.

Q. And why did you do that?

A. As instructed by Mr. Taylor. It was for work that Mr. Forster had done for the company.

Q. And——

(Testimony of Raymond J. Schneider.)

Mr. Cox: I didn't get that last answer.

The Court: Mr. Reporter, read the answer.

(Whereupon, preceding answer was read by the reporter.)

Q. (By Mr. Obenour): Now, what was that check that you received charged to in the check register? [321] A. Notes payable.

Q. And whose notes payable was that credited against? A. Mine, I would think.

Q. To your knowledge, in keeping with that book was this income that was charged to the salary of six thousand dollars you were to receive?

A. Yes, sir.

Q. And the Basket check, would you describe the comparison of the amounts of—you said you had received $317? A. Yes, sir.

Q. And you had previously received two thousand dollars? A. Yes.

Q. Would that make the total of your interest in this $2,317? A. Yes.

Q. And is that the amount that Mrs. Basket received? A. Yes.

Q. And this was, I believe you stated, after the death of Mr. Basket? A. Yes.

Q. And the amount of $1,158.50 is what proportion to yours, then?

A. Half of it, I believe. Let me see—yes, half.

Q. And the endorsement of Mrs. Basket's check is what?

Mr. Cox: If the Court please, that has already been read to the jury.

(Testimony of Raymond J. Schneider.)

The Court: Pardon?

Mr. Cox: That has already been read to the jury.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

Mr. Obenour: I will rephrase it, if the Court please.

Q. (By Mr. Obenour): Directing your attention to the endorsement, can you account for the endorsement on the back of Mrs. Basket's check in the amount of $1,158 in accordance with the directions received by you from Mr. Taylor?

Mr. Cox: I object unless he knows what Mrs. Basket did, and what instructions she received.

The Court: If he doesn't know, he should not state. You may only state what you know, and not what you presume.

Now, if you have any knowledge, you may answer.

The Witness: Would you try that question again?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.) [323] A. Yes.

Q. (By Mr. Obenour): And what is it, please?

A. She did the same thing as I did. She endorsed it, and then it was re-endorsed by Hans Forster, and his companies.

Q. Now, who directed that that be done?

Mr. Cox: If he knows.

A. The direction came from Mr. Taylor.

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): Now, how was this amount reached? A. Sir?

Q. How was the amount of these checks determined?

A. The balance of our salary here in each case, mine and Mrs. Basket's, was divided in half, as I see it here, and that half went, one half of it went, to Mr. Forster.

Q. Here—who computed the amounts that those checks were made out in? A. Mr. Taylor.

Q. And those were the amounts that made up the total then of your income and the income of Mrs. Basket, is that correct?

A. This was the balance of our past salary after what we had drawn, I believe.

Q. And that was for the year that you received in [324] 1945?

A. (Witness nodded in the affirmative.)

Q. Now, did you pay income tax yourself on the total amount of six thousand dollars in that year? A. I think I did.

Q. Did you receive the full amount——

The Court: (Interposing) "That year,"—you mean 1944?

Mr. Obenour: Yes, sir; 1944, pardon me.

Q. (By Mr. Obenour continuing): Were you on a calendar or fiscal year? A. Fiscal year.

Q. And the same as your company?

A. Oh, no; not personally.

Q. Yourself? A. Calendar year.

Q. And did you for the year of 1944 take the

(Testimony of Raymond J. Schneider.)

full amount of six thousand dollars in your own income tax?

A. I couldn't say without seeing the return.

Q. Calling your attention to August 27, 1945, on your entry there. A. Yes?

Q. August 27, 1945. A. Yes, sir. [325]

Q. You have—calling your attention to—check No. 2426 and 2427? A. Yes, sir.

Q. Would you please state what those checks are?

A. The first one is to R. J. Schneider, balance salary, $3600; the second one is payable to Mazie Basket, $4,110.00.

Mr. Griffin: I think the record should show that the witness is now reading, if I am correct, from 199-A.

The Court: Is it marked there?

Mr. Griffin: 199 something.

The Witness: It isn't "A," I don't believe. "C."

Mr. Griffin: "C"?

The Witness: "C."

The Court: All right, and the numbers on the check refer to the numbers appearing in that check register, is that correct?

The Witness: That is correct.

The Court: Now, the first check was 2426?

The Witness: 2426, yes, sir.

The Court: And the second one was 2427?

The Witness: 2427.

The Clerk: Plaintiff's Exhibit No. 204 marked for identification. [326]

(Testimony of Raymond J. Schneider.)

(Plaintiff's Exhibit No. 204 marked for identification.)

Q. (By Mr. Obenour): Would you please describe dates and the amount and the payee of those checks, please?

A. The date is August 20th, the first was made to myself, R. J. Schneider, balance salary, No. 2426, for $3600.

Q. Now, who drew that check?

A. Mr. Taylor.

Q. And who filled out the check register, or made distribution? Or, rather, who filled out the check register? A. Mr. Taylor.

Q. Who made distribution? A. I did.

Q. And to what was the distribution made?

A. Wages and salary.

Q. And who determined it should be charged to wages? A. Mr. Taylor.

Q. And to whose salary account was it charged?

A. My own.

Q. And was this the balance then that you say you had drawn three hundred dollars a month for twelve months preceding? [327] A. Yes.

Q. And this was the balance then of the amount coming to you? A. Yes, sir.

Q. Now, as to 2427, would you describe that?

A. The same date, 8-20, payable to Mazie Basket, check No. 2427, $4,110.

Q. And who drew this check?

A. Mr. Taylor.

Q. And who filled the check register?

(Testimony of Raymond J. Schneider.)

A. Mr. Taylor.

Q. And who made distribution? A. I did.

Q. And to what was that charged?

A. Wages and salary.

Q. And whose wages was that charged to?

A. Mazie Basket's.

Q. And that also brought her total up then to the same as your own?

A. Yes, that is right.

Q. I would ask if you can identify two checks identified as Plaintiff's Exhibit No. 204 for identification, please?

A. Those are the two checks we just spoke of.

Q. Are those the checks which you have just described? [328] A. Yes, sir.

Mr. Obenour: We will offer them, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 204 for identification may be admitted.

(Plaintiff's Exhibit 204 admitted in evidence.)

Mr. Obenour: I would read these, if the Court please, to the Jury.

Also Renton Ice and Ice Cream Company, on No. 2427, Renton, Washington, August 27, 1945, pay to the order of Mazie Basket, $4,110, signed R. J. Schneider, L. Hicks Taylor, and directed to the Renton Branch of the Peoples National Bank: 2426, Renton Ice and Ice Cream Company, Renton,

(Testimony of Raymond J. Schneider.)

Washington, August 27, 1945, pay to the order of R. J. Schneider, thirty-six hundred dollars, signed R. J. Schneider, L. Hicks Taylor.

Mr. Schneider's check is endorsed R. J. Schneider, and Mrs. Basket's check is endorsed Mazie Basket.

Q. (By Mr. Obenour): Would you tell the Court, please, what you did [329] with those checks? A. They were cashed at the bank.

Q. What bank?

A. Peoples National Bank of Renton.

Q. And what did you do with—how did you get Mrs. Basket's check?

A. Mrs. Basket endorsed it and gave it back to me.

Q. And what did you do then? Did you cash her check as well as your own?

A. I think I did.

Q. And what did you do with the proceeds then of the total amount of $7,710?

A. It is possible I bought cashier's checks. [330]

* * * * *

Q. (By Mr. Obenour): At the recess, I asked you what you had done with the two checks of $3600 to yourself and $4110 to Mazie Basket in the total of $7,710, and I believe you stated that you had cashed them at the Renton Bank?

A. Yes, sir.

Q. And what did you do with the proceeds of that?

A. I think I bought cashier's checks with them.

(Testimony of Raymond J. Schneider.)

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 77 and identified—or is it admitted—it has been admitted—pardon me—and identified as an order for cashier's check and a cashier check and ask you if you can identify those, yourself, please? [331] A. Yes.

Q. And what is that, please?

A. The one is the order for a cashier's check signed by me at the bank.

Q. On what date, please?

A. On August 29, 1945.

Q. And in what amount? A. $2,755.

Q. And what is the other document there?

A. That is the check itself.

Q. And to whom is it addressed?

A. Hans Forster.

Q. And in what amount? A. $2,755.

Q. And what date? A. August 29, 1945.

Q. And you received the original of that cashier's check? A. Yes, sir.

Q. And what did you do with it?

A. I mailed it to Mr. Forster.

Q. And for what reason did you mail it to Mr. Forster?

A. I was so instructed by Mr. Taylor.

Q. Now, in April, 1945, two checks totalling $2,317 [332] were sent to Mr. Forster and in August, 1945, that cashier's check in the amount of $2,755 was sent to Mr. Foster, totalling $5,072 paid to Mr. Forster in 1945.

(Testimony of Raymond J. Schneider.)

Why were not checks written directly to Mr. Foster for those amounts?

A. I couldn't say why they weren't.

Q. They were charged to your salary and to the salary of Mrs. Basket? A. Yes.

Q. Did Mr. Forster have a salary account?

A. No, sir.

Q. Was he credited with any salary at your company? A. No, sir.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 25 which has been identified as the income tax return for the Renton Ice and Ice Cream Company for the fiscal year 1945.

First, when was the fiscal year for your company?

A. July 31st was the end of our year.

Q. I will ask you if you can identify that, please? A. Yes, sir.

Q. And whose signatures are on the bottom of that tax return?

A. R. J. Schneider, president; L. Hicks Taylor, secretary. [333]

Q. Is that your signature? A. It is.

Q. And is that the tax return of the Renton Ice and Ice Cream Company for the fiscal year 1945—of your corporation? A. Yes; yes, it is.

Mr. Obenour: I will offer Plaintiff's Exhibit 25 at this time.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

(Testimony of Raymond J. Schneider.)

The Court: Exhibit 25 for identification may be admitted.

(Plaintiff's Exhibit No. 25 admitted in evidence.)

Q. (By Mr. Obenour): I call your attention, please, to the item of Officers' Salary on the first page of Exhibit 25, and would you read that amount, please? A. Officers' Salary, $6,000.

Q. And calling your attention to the inner page, the main section, the item Schedule F, compensation of officers there, what is that item, please?

A. R. J. Schneider, Renton, Washington, president, entire time devoted to business, one-third common stock, [334] amount of compensation six thousand dollars.

Q. Did you declare six thousand dollars on your own tax return? A. I think so.

Q. Did you receive six thousand dollars from Renton Ice and Ice Cream Company in the year ending that this represented, for the fiscal year 1945?

Mr. Cox: If the Court please, the checks are in evidence for what he received.

The Court: Objection overruled.

A. I think so.

Q. (By Mr. Obenour): Did you receive the entire amount of six thousand dollars?

The Court: (Interposing): Did you say you thought so?

The Witness: I think so, yes.

Q. (By Mr. Obenour continuing): Did you re-

(Testimony of Raymond J. Schneider.)

ceive the entire amount of six thousand dollars for your own use during that year?

A. I received that amount.

Q. And does that include the amount then that you have stated you paid back to Mr. Forster?

A. It would include that amount.

Q. And did you pay taxes then on the entire six [335] thousand dollars? A. Yes.

Q. And by whom was that tax paid?

A. I believe it was paid by the company.

Q. The entire amount was paid by the company?

A. Now, I will have—they were withholding tax each time on the amount that I drew by the month.

Q. And the tax was withheld in the entire amount from your salary? A. Yes.

Q. For six thousand dollars?

A. The amount I drew by the month.

Q. Yes.

A. Whatever that amount was, yes.

Q. Did you make any inquiry as to whether or not Mr. Taylor or Mr. Forster—as to why you should enter six thousand dollars on the tax return of the corporation of which you were president, which in fact included money to Mr. Forster?

Mr. Griffin: I object to the form of the question; no question as to Mr. Forster. Compound.

The Court: Objection sustained.

Q. (By Mr. Obenour continuing): Did you make any inquiry of Mr. Forster as to why on the tax return you signed as president [336] and in-

(Testimony of Raymond J. Schneider.)

cluded the amount six thousand dollars which included money paid to Mr. Forster?

A. I don't remember I did.

Q. Did you make any such inquiry of Mr. Taylor? A. I don't remember that I did.

Q. For what reason did you include that amount on your tax return without making any inquiry as including the amounts paid to Mr. Forster?

A. I didn't make out the return.

Q. Who made out the return?

A. Mr. Taylor.

Q. Who made out your return?

A. Mr. Taylor.

Q. Did you sign the tax return of your own—of the corporation and your own tax return for that year? A. I think I did. [337]

* * * * *

Q. (By Mr. Obenour): I hand you what has been marked for identification as Plaintiff's Exhibit No. 206 and ask if you can identify those, please?

A. They are the two checks we were just discussing.

Mr. Obenour: I ask that they be admitted into evidence, if the Court please.

The Court: You discussed three checks. Are there three there?

Mr. Obenour: No, sir; we have only the two.

Q. (By Mr. Obenour): Would you describe those checks, please? [344] A. Yes.

Q. Pardon me?

(Testimony of Raymond J. Schneider.)

A. One is to Mazie Basket, for $2,892.60; and R. J. Schneider, $2,191.

Mr. Griffin: We have no objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 206 for identification may be admitted.

(Plaintiff's Exhibit 206 for identification admitted in evidence.)

Q. (By Mr. Obenour): To whose salary accounts were these checks charged, please?

A. Mazie Basket, R. J. Schneider.

Q. Your check for $2,191 was charged to your account? A. Yes, sir.

Q. And Mrs. Basket's for $2,892.60 was charged to her account? A. That is right.

Mr. Obenour: Pardon me, if the Court please, I would read these checks to the jury.

The Court: You may.

Mr. Obenour: 3397, check of Renton Ice and Ice Cream [345] Company, Renton, Washington, September 7, 1946, pay to the order of Mazie Basket, $2,892.60, signed R. J. Schneider, L. Hicks Taylor, and directed to the Renton Branch of the Peoples National Bank, Renton, Washington, and endorsed Mazie Basket and R. J. Schneider, check 3396, of Renton Ice and Ice Cream Company, Renton, Washington, pay to the order of R. J. Schneider, $2,191, signed R. J. Schneider, L. Hicks Taylor, directed to the Renton Branch of the Peoples National Bank, and endorsed R. J. Schneider.

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): Would you please tell what you did with, first, of all, Mrs. Basket's check? Is that your endorsement upon it?

A. Hers first and then mine.

Q. And then how did you happen to come into possession of Mrs. Basket's check?

A. She endorsed it and gave it back to me.

Q. And what did you do then with those two checks?

A. They were not deposited, so I would say I cashed them.

Q. Where would they be cashed, do you recall?

A. Yes, Peoples National Bank of Renton.

Q. And what did you do with the proceeds, please?

A. I think at that time that there were cashier checks [346] *brought* again.

Q. Now, when you say cashier's checks, how many cashier's checks would you buy?

A. I wouldn't know without seeing them.

Q. I hand you what has been admitted into evidence as Plaintiff's Exhibit 76. Can you say what that is, please?

Mr. Griffin: What was that number again, please?

The Court: 76.

Mr. Obenour: 76.

A. That is a cashier's check on the Peoples National Bank of Renton, dated September 12, 1946, for one thousand eight hundred and thirty-three dollars and fifty-three cents.

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): Payable to whom?

A. Hans Forster.

Q. And the endorsement on the back, on the back of——

A. (Interposing) Hans Forster endorsement.

Q. And is that one of the cashier's checks you purchased with the proceeds of the two checks totalling $5,083.60?

A. It seems quite reasonable. I think it is.

Q. Is that the check that you purchased with the proceeds, to the best of your recollection? [347]

A. Yes, sir.

Q. And what did you do with that check?

A. Mailed it to Mr. Forster.

Q. Why was Mr. Forster given the check in the amount of eighteen hundred—what was it?—pardon me—what is the amount? A. $1833.53.

Q. And why was Mr. Forster sent that check of $1,833.53?

A. Mr. Taylor advised us to do that.

Q. And does that include the proceeds then of the checks which were charged against the salary account of yourself and Mrs. Basket?

A. It was the end of the year. I would think that.

Q. And why was not Mr. Forster written a check for the amount of $1833.53?

A. I wouldn't know why we paid him that amount. We had no salary, I know, for him.

Q. Who determined it? A. Mr. Taylor.

Q. The exact amount? A. Yes, sir.

(Testimony of Raymond J. Schneider.)

Q. There was no salary account?

A. No, sir.

Q. Did you make any inquiry of Mr. Forster as to why [348] you should send him that check?

A. No, sir.

Q. Did you make any inquiry of Mr. Taylor as to why you should send him that check?

A. I did the first one or two.

Q. Did you after that? A. I doubt it.

Q. For what reason?

A. It just seemed to be the way he was handling our affairs.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 26 which has been identified as the income tax returns for the Renton Ice and Ice Cream Company for the calendar year of 1946 and ask you if you can identify that as your signature there, please? A. Yes, it is.

Q. And what return is that?

A. That is for the year ending July 31, 1946.

Q. And whose signatures are on the bottom?

A. R. J. Schneider, president; L. Hicks Taylor, secretary.

Mr. Obenour: I offer it in evidence at this time, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection. [349]

Mr. Keesling: No objection.

The Court: Exhibit 26 for identification may be admitted.

(Testimony of Raymond J. Schneider.)

(Plaintiff's Exhibit No. 26 admitted into evidence.)

Q. (By Mr. Obenour): Calling your attention to the first page of Exhibit 26, the item Officers' Salary, will you read that, please?

A. Officers' Salary, six thousand dollars.

Q. And I call your attention to the inner page of the main sheet, Schedule F, will you read that item, please?

A. R. J. Schneider, Renton, Washington, president, entire time devoted to business, one-third common stock, amount of compensation six thousand dollars.

Q. Did you declare the amount of six thousand dollars on your own tax return for that year?

A. I think so.

Q. Did this item of six thousand dollars on the tax return of the Renton Ice and Ice Cream Company include the amount you stated was paid to Mr. Forster? A. I think so.

Q. Who prepared this tax return?

A. Mr. Taylor. [350]

Q. Who prepared your tax return for that year?

A. Mr. Taylor.

Q. Did you make any inquiry of Mr. Forster as to why you should show on the corporation income tax return of which you were president, an amount of money paid to Mr. Forster?

A. No, I just signed it.

Q. Calling your attention to which ever of 199, if you please, would have the date of September 10,

(Testimony of Raymond J. Schneider.)

1947—would you please tell the Court what the exhibit is, please? A. 199-F.

Q. Referring now to the date of September 10, 1947, particularly checks 4711, 4712 and 4713, do you have those items? A. I have them, yes.

Q. Would you describe check 4711, please?

A. Dated September 10, made payable to R. J. Schneider, No. 4711, amount three thousand dollars even.

Q. And who drew that check?

A. Mr. Taylor.

Q. And who filled out the check register?

A. Mr. Taylor.

Q. Who made distribution?

A. Office girl. [351]

The Court: When you say "distribution," are you talking about written—showing on the account book?

Mr. Obenour: Yes, sir.

Q. (By Mr. Obenour): The item to which it is charged, the term "distribution" is the term you used, Mr. Schneider?

A. That is right, the account it would go to in the permanent ledger book, or whatever it is.

Q. And who made this distribution?

A. The office girl.

Q. And to what account was it charged?

A. Salary and wages.

Q. Whose salary and wages account?

A. Well, that one would be to mine.

Q. And at whose direction was such distribu-

(Testimony of Raymond J. Schneider.)

tion to salary account made? A. Mr. Taylor.

Q. Now, 4712, will you describe that check, please?

A. The same date, check payable to Mazie Basket and the amount is $3,960.00.

Q. Similarly, who drew and registered that check?

A. Mr. Taylor and the office girl.

Q. And the distribution was the same as the other? A. Yes, sir.

Q. And to what account was that check charged?

A. Wages and salaries.

Q. Of whom? A. Mazie Basket.

Q. Now, what is check 4713?

A. Check of the same date, September 10, payable to L. Hicks Taylor, 4713, six hundred dollars.

Q. And who drew that check?

A. Mr. Taylor.

Q. To what account is that charged?

A. Well, it is that column that includes accounts payable and donations and advertising and so on; miscellaneous.

Q. At that time, did Renton Ice and Ice Cream Company owe Mr. L. Hicks Taylor six hundred dollars. A. Not that I know of.

Q. Was that amount received in addition to the fifty dollars a month received in the preceding year?

A. Yes.

Q. I hand you——

Mr. Obenour: Will you mark it first, please, as one exhibit?

(Testimony of Raymond J. Schneider.)

The Clerk: Plaintiff's Exhibit 207 marked for identification.

(Plaintiff's Exhibit No. 207 marked for identification.) [353]

Q. (By Mr. Obenour continuing): I hand you what has been marked for identification as Plaintiff's Exhibit 207; can you identify that, please?

A. Those are the two checks signed by myself and Mr. Taylor, one for three thousand to me, and one for three thousand nine hundred sixty dollars to Mazie Basket, that were just being discussed.

Mr. Obenour: I ask that that be admitted into evidence, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 207 for identification may be admitted.

(Plaintiff's Exhibit No. 207 received in evidence.)

The Clerk: Plaintiff's Exhibit 208 marked for identification.

(Plaintiff's Exhibit No. 208 marked for identification.)

Mr. Obenour: If the Court please, I would read these to the jury.

The Court: You may.

Mr. Obenour: Check No. 4711, dated September 10, [354] 1947, to R. J. Schneider, $3,000, signed R. J. Schneider, L. Hicks Taylor, and endorsed R. J. Schneider; 4712, check, September 10, 1947,

(Testimony of Raymond J. Schneider.)

to Mazie Basket, $3,960, signed R. J. Schneider and L. Hicks Taylor.

Q. (By Mr. Obenour): Handing you Plaintiff's Exhibit 207, what did you do with those checks, please?

A. The fact that they were cashed at the bank indicates, I believe, that there were cashier's checks bought with them, probably.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 75 and it has been identified as a cashier's check and an order for a cashier's check of the Renton Bank; can you identify that?

A. Yes, it is a cashier's check on the Renton Bank dated September 12, 1947, payable to Hans Forster for $2,685.

Q. Now, at that time, did you also pay checks to yourself and to Mrs. Basket?

A. I think so.

Q. Of similar amounts? A. Yes.

Q. And what did you do then with that twenty-five hundred — $2,685.00 — cashier's check, Mr. Schneider? A. I mailed it to Mr. Forster.

Q. For what reason did you mail it to Mr. Forster? A. Instructions of Mr. Taylor.

Q. For what reason—were you given any reason as to why you should send it to Mr. Forster?

A. Yes, that he should share in our salary because of the fact that he was also earning money for the firm or doing part of the work.

Q. They were charged—the entire amount,

(Testimony of Raymond J. Schneider.)

though, was charged to the wage account of yourself and Mrs. Basket? A. Yes.

Q. I hand you Plaintiff's Exhibit 27 for identification, which has been identified as the income tax return for Renton Ice and Ice Cream Company for the year 1947. Can you identify that as to signature? A. It is mine.

Q. And whose other signature is that?

A. L. Hicks Taylor, Treasurer and Secretary.

Q. Is that the tax return of your corporation for that year? A. July 31, 1947.

Mr. Obenour: I ask that it be admitted at this time, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection. [356]

The Court: That is 26?

Mr. Obenour: 27, if the Court please.

The Court: Exhibit No. 27 for identification may be admitted.

(Plaintiff's Exhibit No. 27 admitted in evidence.)

Q. (By Mr. Obenour): Similarly have the entry "Officers' Salary, $7800," does that show the salary you received as shown on the tax return?

A. I believe it is.

Q. Calling your attention to the page under Schedule F, that entry—— A. Yes.

Q. (Continuing) R. J. Schneider, Renton, Washington, president and manager, salary $7800?

A. Yes.

(Testimony of Raymond J. Schneider.)

Q. And that is the amount shown here?

A. Yes, sir.

Q. And did you pay that amount on your own tax return? A. I think I did.

Q. And of that amount of $7800, you had paid the amount, as you have described, to Mr. Forster in that year? [357] A. Yes.

Q. Did you make any inquiries as to Mr. Forster in this year as to why you should sign a tax return as president of Renton Ice and Ice Cream Company which shows an amount of salary which includes an amount which you paid back to Mr. Forster?

A. The checks were made payable to me.

Q. Did you say anything to Mr. Forster as to why you should sign such a tax return showing an amount part of which had been paid to Mr. Forster? A. No.

Q. Did you make such a request of Mr. Taylor?

A. Probably not.

Q. Calling your attention now, if you would, please, to 199, whichever exhibit would reflect the date of November 1, 1948. A. Yes, sir.

The Court: Could you give us the number of that exhibit?

The Witness: This is 199-H.

Mr. Obenour: Thank you.

Q. (By Mr. Obenour): Calling your attention now to November 1, 1948, particularly checks 6317, 18, 19 and 20? A. Yes. [358]

Q. Would you describe check 6317, please?

(Testimony of Raymond J. Schneider.)

A. 6317, November 1, W. R. Basket, balance of salary, $2,507.00.

Q. And the next check?

A. M. R. Basket, balance of salary, $1,253.00.

Q. What is the date of that check?

A. That is the same date, November 1.

Q. And the next check?

A. The next check is the same date, R. J. Schneider, balance of salary, $2,507.

Q. And finally 6320?

A. R. J. Schneider, balance of salary, 6320, $1,253.

Q. Those were four checks written two each to you and to Mrs. Basket? A. Yes, sir.

Q. Same date? A. Yes, sir.

Q. Who drew them? A. I did.

Q. Who filled out the register? A. I did.

Q. Who made distribution? A. Office girl.

The Clerk: Plaintiff's Exhibit No. 209 marked for [359] identification.

Mr. Obenour: Maybe this might be incorporated.

The Clerk: Strike that.

Mr. Griffin: Do we have a 208?

The Clerk: Yes, Plaintiff's Exhibit 208 for identification is four checks with attachments.

Mr. Obenour: I will incorporate this with the exhibit, if I may.

The Court: The four checks?

Mr. Obenour: Four checks and an attachment. 208.

Q. (By Mr. Obenour): Now, how was the

(Testimony of Raymond J. Schneider.)

amount of these four checks determined?

The Court: Well, that hasn't been identified as yet.

Mr. Obenour: Pardon me. I was about to identify it, if the Court please.

Q. (By Mr. Obenour continuing): The checks that you have described from your check register, how were those amounts determined?

A. Well, Mr. Taylor had said that we could write the balance of our salary, and I asked him what the amount was, and he said he would either bring it out or phone it. He phoned and I wasn't there, and he gave the amount to the office girl, and I then divided it in thirds and wrote two [360] checks for that amount and two for half of that amount.

Q. And is that the note that you have which made the determination—from which those checks were made? A. Yes, it is.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

Mr. Griffin: We have no objection.

The Court: Exhibit 208 for identification may be admitted.

(Plaintiff's Exhibit 208 admitted in evidence.)

Q. (By Mr. Obenour): Now, those four checks there, will you state what the endorsements are on the back of them, please?

A. The first one that is made out to me for one thousand two hundred and fifty-three dollars, Hans Forster, R. J. Schneider.

(Testimony of Raymond J. Schneider.)

Q. There are endorsements on the back of that check? A. Of this check, yes.

Q. What is the check number?

A. That is check No. 6320.

Q. And the next check to yourself of $2,507 is endorsed how?

A. Just endorsed by myself and then the bank for [361] deposit.

Q. And the next check 6318?

A. $1,253.00, No. 6318, payable to M. R. Basket, endorsed M. R. Basket and Hans Forster.

Q. And then finally, the last check of $2,507, Mrs. Basket.

A. M. R. Basket, Mazie R. Lovenger.

Q. What did you do with your $1,253 check?

A. Mailed it to Mr. Forster.

Q. And the check to M. R. Basket in the amount of $1,253 which was identified by the endorsement M. R. Basket and Hans Forster, what happened to that check?

A. I don't know whether I mailed it——

Q. (Interposing) To whom?

A. To Mr. Forster.

Q. And for what reason did you mail two checks endorsed by each of you to Mr. Forster?

A. Instructions of Mr. Taylor.

Q. And these were the amounts that had been charged against your salary account?

A. That one, yes, or the ones made payable to me.

Q. Handing you Plaintiff's Exhibit 28 for iden-

(Testimony of Raymond J. Schneider.)

tification, which has been identified as the income tax return of Renton Ice and Ice Cream Company for the year 1948, do you recognize your signature upon that return? [362] A. Yes, sir.

Q. And whose else signature is upon it?

A. L. Hicks Taylor.

Mr. Obenour: We offer it at this time, if the Court please.

Mr. Griffin: No objection.

Mr. LeSourd: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 28 may be admitted.

(Plaintiff's Exhibit No. 28 admitted in evidence.)

Q. (By Mr. Obenour): Referring to the Officers' Salary in the amount of $7800. A. Yes?

Q. What is that amount?

A. I think that is the amount of my salary.

Q. Referring to the Schedule F, R. J. Schneider, Renton, Washington, president and manager, entire time devoted to business, one-third stock ownership, $7800. A. That is right.

Q. Is that the salary you received?

A. Yes, sir.

Q. And did you declare this salary on your own income tax return? [363] A. I think so.

Q. And again, did you pay the tax on it?

A. I think so.

Q. Who prepared your return?

A. Mr. Taylor.

Q. And who prepared the corporate return?

(Testimony of Raymond J. Schneider.)

A. Mr. Taylor.

Q. Did you make any inquiry of Mr. Taylor as to why you should show in the tax return of the Renton Ice and Ice Cream Company the amount of $7800 part of which had been returned to Mr. Forster? A. No.

Q. Did you make any such request of Mr. Taylor? A. I doubt it.

Q. Have you any reason why you did not?

A. Oh, it was ready for me to sign and I just signed it as prepared by him.

Q. Did you ever purchase a—any ice cream freezers from Issaquah Creamery? A. One.

Mr. Obenour: I ask that this be marked for identification, please.

The Clerk: Plaintiff's Exhibit 209 marked for identification.

(Plaintiff's Exhibit 209 marked for identification.) [364]

Q. (By Mr. Obenour): How was that transaction handled; from whom did you purchase it?

A. I talked to Mr. Forster.

They were hard to get, and he had had a shipment, and I talked him out of one. He said he could spare one, and I bought it from him.

Q. I ask if you can identify plaintiff's exhibit No. 209?

A. Check in the Issaquah Creamery Company, dated August 6th, 1948, for $412.50, signed by R. J. Schneider and L. Hicks Taylor.

Q. And for what purpose was that check issued?

(Testimony of Raymond J. Schneider.)

A. I think this was for the ice cream cabinet.

Mr. Obenour: I ask that it be admitted, if the Court please.

Mr. Griffin: No objection.

Mr. Cox: No objection.

Mr. Keesling: No objection.

The Court: Exhibit 209 for identification may be admitted.

(Plaintiff's Exhibit No. 209 admitted in evidence.)

Q. (By Mr. Obenour): And how was that paid to Issaquah Creamery, if you recall? [365]

A. By check. Oh, it would be mailed to them.

Mr. Obenour: If the Court please, I will read the endorsement on the back to the jury.

The Court: You may.

Mr. Obenour: Issaquah, pay to the order of Issaquah State Bank, Issaquah, Washington, and stamped Issaquah Creamery Company, Alpine Dairy Products, and Hans Forster.

I ask that these be marked for identification, please.

The Clerk: Plaintiff's Exhibit 210 marked for identification.

(Plaintiff's Exhibit 210 marked for identification.)

Q. (By Mr. Obenour): Calling your attention, if you would, please, Mr. Schneider, to Exhibit 199, whichever check register might be for the date of July 31, 1949?

A. No. 199-I. The date was July?

(Testimony of Raymond J. Schneider.)

Q. 31st, 1949. Is there any entry there made to the effect of notes being drawn—or where would you make such entry? Would you show notes of any sort in that book? That would be just the checks themselves, would it? A. Yes.

Q. Now, at the termination of your fiscal year 1949, [366] do you recall whether or not you received the balance of your salary?

A. I don't recall that we did.

Q. Handing you what has been marked for identification as Plaintiff's Exhibit 210, can you identify those objects, please?

A. The first one is a note dated July 31, 1949, for $3,244.80 payable on demand to Mazie Basket, 5 per cent per annum, payable semi-annually, by the Renton Ice and Ice Cream Company, R. J. Schneider, president, and L. Hicks Taylor, secretary.

Q. And what is the second one?

A. The second one is—the amount is—it is a note on demand made payable to R. J. Schneider, same date, and the amount is $2,544, Renton Ice and Ice Cream Company, R. J. Schneider, president, and L. Hicks Taylor, secretary.

Q. What was the purpose of those notes?

A. They were the balance of our salary for the year 1948-1949.

Q. Out of that total amount of $5,788.80, did you owe Mr. Forster any of that for his share of the unpaid balance of your salary? A. No.

Q. You did not? A. No. [367]

(Testimony of Raymond J. Schneider.)

Q. Did you believe that that amount was your unpaid balance of your salary?

A. Yes, sir.

Q. And that Mr. Forster had no interest in it?

A. Yes.

Q. Did you receive payment for your note?

A. Paid and cancelled; I think I did.

Q. And do you have a check there that would reflect the payment of that note?

A. There is a check payable to me for $2,544, which is the amount of my note.

Q. And what is the date which is marked "cancelled" on your note, or does it show?

A. It doesn't show.

Q. And calling your attention to January 4, 1950, the check register of item 199; do you have that? A. The date again?

Q. January 4, 1950. A. Yes.

Q. Now, what is the entry on that check?

A. January 4, M. R. Basket, balance of salary, $3,244.80.

Q. And what is the amount of her note?

A. $3,244.80.

Q. And that is charged to balance of salary on the [368] check? A. Yes.

Q. And the note had been drawn for the balance of her salary in July? A. Yes.

Q. Had that check in the amount of $3,244 been to pay off the note to her? A. Yes.

Q. And the next check in the amount of $2,544—

(Testimony of Raymond J. Schneider.)

$2,544, to you on the same date, is there such a check? A. Yes.

Q. And what is the entry on that?

A. On the check?

Q. How was that check registered there?

A. R. J. Schneider, balance of salary, $2,544.

Q. And similarly, was that to pay off your note?

A. It was.

Q. And were both of those charged against the salary of you and Mrs. Basket? A. Yes.

* * * * * [369]

Mr. Obenour: The check in the amount of $3,-244.80 to Mrs. Basket is endorsed M. R. Basket and check to R. J. [370] Schneider, $2,544 is endorsed R. J. Schneider.

Q. (By Mr. Obenour): Will you tell the Court what you did with those two checks, please?

A. They apparently were deposited or, I should say, I cashed them, or we cashed them.

Q. And what did you do with the proceeds?

A. Probably bought cashier checks of some sort or form.

Q. Did you buy a cashier's check with part of the proceeds for Mr. Forster?

A. I wouldn't know without seeing it.

Q. To the best of your recollection, would you have followed the same pattern you did in 1945, '46, '7 and '8 in cashing the checks at the Renton Bank and buying cashier's checks?

Mr. Griffin: I object to the form of the question.

The Court: Objection sustained.

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): I believe you stated you have bought cashier's checks with the proceeds?

A. This time?

Q. Yes. A. Gosh, I don't remember.

Q. To the best of your recollection. [371]

A. I don't remember a thing about the details on it. I mean, I don't know whether I was able to keep this all this time, or still divide it. [372]

* * * * *

Q. You paid tax on your own return. Did you ever make any inquiry of Mr. Forster or Mr. Taylor as to why you should have paid taxes between the years 1945 to 1949 of an amount $14,062.53 which was given back to Mr. Forster?

A. I believe not. [374]

* * * * *

Q. (Continuing) Do the corporation records show in any manner that the amount of $14,062.53 was paid to Mr. Forster in the years 1945 through 1949? A. I think not.

Q. Did you ever question this manner of transmitting funds to Mr. Forster to Mr. Taylor; in other words, make any inquiry of Mr. Taylor of that?

A. Yes, when he first did it, I asked why. [375]

* * * * *

Mr. Griffin: If the Court please, while I must disagree entirely with the Government's argument that this is a scheme to evade taxes, and it is in no sense that, I make this statement—I must say to your Honor—that the manipulation of these books

(Testimony of Raymond J. Schneider.)

of one of these entities of Mr. Forster unquestionably resulted in additional income to Mr. Forster. There can be no question or doubt about that, because there was more to divide in the years in question.

The Court: In the years involved in this Indictment?

Mr. Griffin: Yes.

Now, I don't want my statement taken as any admission of the Government's position at all of a scheme, device, or anything of that kind, but factually and manifestly [405] as it will show on the face of the record itself, when you do a certain thing in the books, you either increase income or you decrease it. You don't do anything else, and that is what happened here. It didn't have to wait until 1949 for division. While there were no dividends, what was being done each year is, as a matter of fact, whether you call it bonus or anything else, but, if operated as it should have been, it would have been a dividend to the stockholders so that would in this instance, in changing the books, would have resulted in a greater dividend or a greater bonus or a greater charge to salary to Mr. Forster. We concede it. [406]

* * * * *

Q. (By Mr. Obenour): Calling your attention to the month of July, 1947, if you would, please, that is Exhibit 212, is it, yet? A. 212, yes.

Q. Now, were there any—did you keep the accounts in that month? A. Yes, I did.

(Testimony of Raymond J. Schneider.)

Q. Are the figures in your handwriting?

A. Most of them.

Q. What figures are not in your handwriting?

A. There are some addition here of 1's that are [421] not in my handwriting.

Q. Now, would you tell the jury what are the accounts where there are some 1's not in your handwriting?

A. There is an item here of July 15, Seattle Brewing & Malting.

Mr. Moriarty: What year?

Q. (By Mr. Obenour): What year is this?

A. 1947.

Q. This is all in the same month and the same year? A. Yes, sir.

Q. All right. What is the item now?

A. There is an item here on the 15th to Seattle Brewing & Malting, $1,886.40.

Q. What figure is not in your writing?

A. The "1".

Q. Which figure is that; what is the effect of that "1"?

A. Well, it raised it from $886.40 to $1,886.40.

Q. Who made that additional figure?

A. Mr. Taylor.

Q. And the next item is what?

A. Issaquah Creamery on the 18th of July. The figure originally was $426. It is now $1,426.

Q. And the next one, please? [422]

A. Issaquah Creamery, then $274, it is now $1,274.

(Testimony of Raymond J. Schneider.)

Q. And the next one?

A. The next one is on the 22d, Seattle Brewing, it was $886.40. It is now $1,886.40. Similarly, on the 23d, Seattle Brewing, it was $886.40, it is now $1,-886.40.

On the 25th, Issaquah Creamery, was $448.50, is now $1,448.50. On the 29th, Issaquah Creamery, was $585.50; is now $1,585.50.

On the 28th, Seattle Brewing and Malting, was $581.64, is now $1,581.64.

On the 29th, Seattle Brewing, was $886.40, is now $1,886.40.

The next entry, L. Hicks Taylor, $650, is not in my writing.

Q. How many 1's were added to that?

A. Nine, I believe.

Q. And did that then raise your accounts payable nine thousand dollars in that month?

A. Yes, sir.

Q. When were those 1's placed there in that book?

A. When Mr. Taylor was adding it up.

Q. How do you know Mr. Taylor did it?

A. I saw him.

Q. Did you have any conversation about raising your accounts payable nine thousand dollars for the month of [423] July, 1947?

A. I am not sure.

Q. Did he make any statement to you about raising your accounts payable to that month?

(Testimony of Raymond J. Schneider.)

A. If so, the answer was as before; it would be adjusted in the next period.

Mr. Cox: I move to strike that as an entire supposition.

The Court: The answer may be stricken, and the jury will disregard it.

Q. (By Mr. Obenour): What amount did you pay in each of these nine accounts to the distributor or supplier to the Renton Ice and Ice Cream?

A. The first amount that I mentioned. I don't think any of them ran over;—I think they were all under—one thousand dollars.

Q. Did you pay any of that nine thousand dollars on accounts payable?

A. I believe not.

Q. Was there any basis by which Mr. Taylor could justify raising any of those accounts one thousand dollars each?

Mr. Cox: Object to the form of the question; calling for a conclusion. [424]

The Court: Objection sustained.

Q. (By Mr. Obenour): Was there any debt owed on any account payable, owed to any of those nine accounts, which would amount to those thousand dollar items to which you testified?

A. Not that I know of.

Mr. Cox: Object to the form of the question. I move to strike.

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the reporter.)

(Testimony of Raymond J. Schneider.)

Q. (By Mr. Obenour): And the answer was what, please? A. Not that I know of.

Q. Was this the end of your fiscal year, this month? A. Yes, sir.

Q. For 1947. A. Yes, sir.

Q. What was the effect of raising your accounts payable at the end of your fiscal year in 1947 nine thousand dollars? A. It made us owe more.

Q. And what then was the effect upon your income for that as shown by your books of Renton Ice and Ice [425] Cream?

A. We would make less.

Q. And what would be the effect of your taxes paid for the year 1947?

A. We would pay less.

Q. Pay less? A. Pay less.

Q. Taxes? A. Yes. * * * * * [426]

Cross Examination

* * * * *

Q. (By Mr. Griffin): I don't care whether you call it profits, you made a division of surplus or profits or money you had in the corporation and not expended, didn't you?

A. We made a division of salary.

Q. Or, you call it "salary", but it was unexpended money that the corporation had?

A. Yes.

Q. And you called it salary because Mr. Taylor set it up that way at the beginning, didn't you?

A. Yes, sir.

(Testimony of Raymond J. Schneider.)

Q. Now, in determining what that division should be in each instance, as I understand your testimony, Mr. Taylor computed what he called salary and how the checks should be drawn, is that right? A. That is right. * * * * * [433]

Cross Examination

Q. (By Mr. Cox): And when Mr. Taylor first brought this matter up, did you call Mr. Forster to ask if this had his approval? A. No.

Q. Did you talk to Mr. Basket about it?

A. Yes, he was right there.

Q. He was right there; did you protest to Mr. Taylor that this was your money for which you had worked and for which the corporation had authorized you to receive?

A. That is correct, on the first or second time I did that, or we did that.

Q. What did he say?

A. Well, he said Mr. Forster has made this possible for you to have this salary, and has earned a certain amount of it so he is entitled to it and we will send it to him.

Q. And then you sent it without bothering to call Mr. Forster; you say he wanted you to do this? [467] A. That is right.

Q. Did Mr. Forster call you up and ask what is the nature of the check he received in the mail?

A. No.

Q. Did he offer to send it back? A. No.

Q. Did he ever mention it to you?

(Testimony of Raymond J. Schneider.)

A. He thanked me for it a time or two when I met him next. [468]

* * * * *

Q. And then, referring to April 17, 1945, do you find there a series of three checks, numbers 3180 through 3183, the first to yourself, and charged to notes payable in the amount of three hundred and seventeen? A. Yes.

Q. And one to Mrs. Basket for two thousand three hundred seventeen? A. Yes.

Q. And one to each of you for half of that amount, $1,158.50? A. Yes.

Q. And who made the entries on the check register? A. I made them.

Q. Who made the distribution in the check register?

A. The office girl, I believe. It isn't my handwriting.

Q. I hand you Plaintiff's Exhibit 203 in evidence. Are those the—are those three of the checks to which you refer, the ones which were drawn to Mrs. Basket for $2,317 and the two to you and Mrs. Basket for half of that sum?

A. Yes, that is right.

Q. Who signed those checks?

A. R. J. Schneider and Hans Forster. [476]

Q. Is there anything in the check register with respect to either April 11 or April 17, 1945, which indicates that Mr. Taylor was present in your office at Renton at that time?

A. Nothing in the register, no.

(Testimony of Raymond J. Schneider.)

Q. Then this would simply have been another case where Mr. Taylor perhaps referred to your books to give you the balance of the salary and indicated the amounts that were to be distributed?

A. That is right.

Q. Now, you testified that back at the beginning of this year, some three or four months before this time, at this meeting, after Mr. Basket's death, there was no discussion of whether you would continue to divide your salaries with Mr. Forster?

A. No, sir.

Q. All right; why did you make the division at this point?

A. As usual, we have the amount of the instructions from Mr. Taylor.

Q. And those instructions were to give Mr. Forster half—one-third of your undrawn shares?

A. Yes, whatever the amount was.

Q. Did you protest at this time to Mr. Taylor to this continued sharing of your salary with Mr. Forster? [477] A. I doubt it.

Q. Did you call Mr. Forster to find out whether he wanted you to go on with this? A. No.

Q. Did he ever thank you for that check?

A. Possibly.

Q. What is the charge made by your office girl on the—those checks on the 17th of April, 1945?

A. They are all made payable to notes payable. * * * * * [478]

Q. And it had been a considerable surprise to

(Testimony of Raymond J. Schneider.)

you when Mr. Taylor suggested you should give a part of it to Mr. Forster? A. Yes.

Q. And yet, having the right to draw or issue the checks and the sum having been determined in this way, it never occurred to you to write checks to yourself and Mr. Basket for the amount of your salaries?

A. Never until Mr. Taylor said it was the time to do it.

Q. Now, did you receive the check for $1,158.50 which you drew in favor of yourself on April 17, 1945?

A. Yes, I would say I did. I don't believe I have it here now.

Q. You don't have those checks there?

A. I think I did.

Q. I will get them for you. Handing you Plaintiff's Exhibit 203, does that include a check payable to yourself dated April 17, 1945, in the amount of $1,158.50? A. Yes.

Q. Did you receive that check?

A. Yes. [485]

Q. I believe you testified on direct on Friday that you mailed that check to Mr. Forster?

A. Yes.

Q. Mr. Forster signed the check, didn't he?

A. His stamp is on here.

Q. I mean the front of the check?

A. Yes.

Q. Wouldn't it have been a little more logical to hand it to him when he signed it?

(Testimony of Raymond J. Schneider.)

A. Not in this case.

Q. Why not?

A. Mr. Forster signed checks ahead of time, and I completed them.

Our by-laws stated there must be two signatures on each check.

Q. And you can recall independently this was a check Mr. Forster signed in blank which you used April 17, 1945?

A. No, I can't recall that.

Q. Do you know then that Mr. Forster was not present in the office on that day?

A. No, I don't.

Q. If he had been present, you would, of course, have handed the check to him?

A. Yes, I think I would. [486]

Q. Did he express any surprise?

A. I don't recall anything about it. * * * * *

Q. (By Mr. Cox): Now, will you turn to the entries for July, 1947, in this accounts payable record?

You testified this morning that some alterations were made by Mr. Taylor after you made the entries for this month, is that true?

A. That is right.

Q. When was this done?

A. While he sat at the desk in our office.

Q. Did you see him actually insert the nine figure "1" that you testified this morning were inserted in front [514] of certain entries in that record? A. Yes.

(Testimony of Raymond J. Schneider.)

Q. Do you have any recollection of the day of the month itself that Mr. Taylor came out in August, 1947?

A. No, I have no recollection unless I could find it.

Q. Do you recall when you yourself totalled these figures? A. No, I didn't total them.

Q. You didn't total them at any time?

A. I don't believe so. I don't see any of my figures there as that total.

Q. Well, wasn't it your testimony that you normally totalled those as soon as you could at the end of the month?

A. Yes, sir.

Q. And normally, you would have done so at this time? A. Yes, sir.

Q. And you testified several times that normally Mr. Taylor was paid on the day he came out and did the work on the books, isn't that true?

A check would normally be written to him?

A. Yes.

Q. Directing your attention to that portion of Plaintiff's Exhibit 199-F, bearing the date August 8, 1947, [515] doesn't it appear that the check to Mr. Taylor for his fifty dollars for the preceding month's accounting work was issued to him and given to him on that date?

I am calling your attention now to the check register.

A. Yes, I am trying to see whether it is the same year or not.

(Testimony of Raymond J. Schneider.)

Q. It appears on the outside that this is May 23, 1947, to December 21, 1947.

A. Yes, it does.

Q. Can you explain to the Jury how it was that you departed from your normal custom of totalling your figures in the accounts payable as soon as you could after the end of the month in this case until Mr. Taylor came out on the 8th of August?

A. I couldn't tell exactly why, whether I was away for a day or a week, or whether he told me to leave the books open until he got there. In any case, I apparently didn't total it.

I don't see any of my figures as a total.

Q. Now, I believe at one time, you stated that Mr. Taylor indicated that this was a matter of an adjustment he was making here? A. Yes.

Q. Just what kind of an adjustment could Mr. Taylor [516] have made in a record of this kind?

A. I am not enough of an accountant or bookkeeper to tell you that. [517]

* * * * *

Q. (By Mr. Cox continuing): Isn't it true that the total that now appears there is exactly nine thousand dollars in [521] excess of the true total of the true total of the unpaid accounts at the end of July, 1947?

A. I think so, but I haven't run through them lately to recall at all to be sure of it.

Q. Now, isn't it true, Mr. Schneider, that the figures—some of the figure "1's"—in fact, nearly

(Testimony of Raymond J. Schneider.)

all the figure "1's" that are entered there are very easily detected? A. Oh, yes.

Q. It is not necessary, for instance, for you to go back to your invoices to determine that in fact the invoices that still remained unpaid there was the lesser figure?

A. (Witness nodded in the negative.) I mean, it is plain, very plain.

Q. It is very clear. Now, Mr. Taylor still owned no stock in the Renton Ice and Ice Cream Company, did he, on July 31, 1947? A. No.

Q. He would, therefore, never be entitled to receive a dividend from this corporation or to share in its assets or distribution?

A. No, not that I know of.

Q. You did own stock in the corporation, did you not? [522]

A. Yes, sir.

Q. You were one-third stockholder?

A. Yes.

Q. You were the president and general manager? A. Yes, sir.

Q. And you thought there was nothing wrong with what was done, so far as those accounts payable were concerned, so far as the income tax goes?

A. He assured me there was nothing wrong.

Q. Nothing wrong. [523]

* * * * *

Recross Examination

Q. (By Mr. Keesling): I show you the accounts payable record to which Mr. Cox referred, Exhibit

(Testimony of Raymond J. Schneider.)

212, and referring to the date of July, 1947, in response to a question of Mr. Cox, you stated that with respect to this page headed January 1, 1948, that is the page on which these alterations were made——

Mr. Cox: January 1, 1948?

Mr. Keesling: Just a second here. I guess it isn't that.

Q. (By Mr. Keesling continuing): No, there is no heading on that [587] particular page, is that right? During the month of July of 1947?

A. Yes.

Q. And that is the page that contains the nine alterations of one thousand dollars each that were entered by Mr. Taylor, is that right?

A. Between these two pages, yes.

Q. Between these two pages? A. Yes.

Q. And those were the ones entered by Mr. Taylor personally? A. Yes.

Q. With respect to those alterations, you said you relied on Mr. Taylor. He made some statement concerning those, didn't he?

A. Yes, he said that, when I questioned it, he said it was all right, and not to worry about it, and he would adjust it in the next period.

Q. In other words, you relied on his explanation that he would take care of it and adjust it?

A. Absolutely.

Mr. Keesling: No further questions.

(Testimony of Raymond J. Schneider.)

Further Redirect Examination

Q. (By Mr. Obenour): What was the date that Mr. Taylor first told you [588] that you should follow these plans of giving Mr. Forster a share of the income from the Renton Ice and Ice Cream?

Mr. Cox: Object to the form of the question.

The Court: Objection overruled.

The Witness: Should I answer it?

Mr. Obenour: Yes.

A. It is hard to tell you the exact date, but I believe that it was in 1944.

Q. (By Mr. Obenour): Did you ever—what was the occasion that Mr. Taylor first gave you directions for distributing this money?

A. Whatever the instructions contained, it seemed a little out of the ordinary so I asked about it, and had that answer that I have given, that he should share in that salary.

Q. Had Mr. Taylor given you those instructions in 1943 when distribution was made of the matter to which you previously testified?

A. I don't believe so. I am not sure about that. I don't recall that he did. * * * * * [589]

Q. (By Mr. Cox): And, having increased arbitrarily, as you have testified, certain items in this record, there is no adjustment that could be made in a subsequent period that would correct that, is there, since these were obligations that existed only at the end of the fiscal year, 1947?

(Testimony of Raymond J. Schneider.)

A. From my knowledge of tax work, I wouldn't be able to say "yes" or "no" to that.

Q. You just believed somehow this could be made right? A. Certainly. [593]

* * * * *

MAZIE LOVINGER

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: I want your full name, and the spelling your name, please.

The Witness: Mazie Lovinger.

The Clerk: L-o-v-i-n-g-e-r (spelling)?

The Witness: Yes.

Q. (By Mr. Obenour): Will you state your name, please? A. Mazie Lovinger.

Q. And where do you live, Mrs. Lovinger?

A. 350 Garden Street, Renton.

Q. And are you the widow of C. M. Baskett?

A. Yes. [595]

* * * * *

Q. (By Mr. Obenour): Now, handing you Plaintiff's Exhibits 203, 204, 206, 207 and 208, would you please examine those checks and identify those checks issued to you, Mazie Baskett, in the amounts stated, and the endorsements and as to the disposition you made of them, please?

A. Mazie Baskett, $1,158.50, and the endorsement is Mazie Baskett.

(Testimony of Mazie Lovinger.)

Q. And what did you do with that check, please?

A. I deposited it. No, that one, I didn't. [608]

Q. What did you do with that one?

A. I returned that to Mr. Schneider.

Q. For what reason did you return it to Mr. Schneider? A. To give to Mr. Forster.

Q. And what is the other check there?

A. $2,317, to Mazie R. Baskett.

Q. What did you do with that check?

A. I deposited that.

Q. And for what reason did you give that to Mr. Schneider for Mr. Forster, that $1,158 check?

A. Because he asked me to endorse it and hand it back to him.

Q. Did you ask Mr. Schneider anything about why he should return that check to you, or to Mr. Forster? A. No.

Q. Did you ask Mr. Forster? A. No.

Q. Did you ask Mr. Taylor? A. No.

Q. Is there any reason why you would not ask anyone about returning a check made out to you to Mr. Schneider for Mr. Forster?

Mr. Griffin: Objected to as cross-examination of his own witness. [609]

The Court: Objection sustained.

Q. (By Mr. Obenour): The next check is what, please?

Mr. Cox: May we have the exhibit?

A. Mazie Baskett.

The Court: Is that marked as an exhibit number?

(Testimony of Mazie Lovinger.)

The Witness: 204. I believe that is it right there, isn't it?

The Court: Yes.

A. (Continuing) Mazie Baskett, $4,110, and Mr. Schneider handed it to me and asked me to endorse it, and I handed it back to him.

Q. And the next one in order, please?

A. Mazie Baskett, $2,892.60.

Q. And what date is that?

A. That is September 7, 1946.

Q. And the exhibit number, please?

A. 206.

Q. And what is the endorsement on that?

A. Mazie Baskett and R. J. Schneider.

Q. What did you do with that check?

A. I gave it back to him.

Q. To whom? A. Mr. Schneider. [610]

Q. And the next one, please, there; what is the exhibit number, now, please?

A. 207. Mazie Baskett, $3,960.

Q. What date is that?

A. September 10, 1947.

Q. And how was that endorsed?

A. Mazie Baskett.

Q. And what did you do with that check?

A. Handed it back to Mr. Schneider.

Q. Those three checks for the years 1945, 1946 and 1947, what then happened after you gave those checks, I believe you said, back to Mr. Schneider?

A. He brought me a cashier's check from the

(Testimony of Mazie Lovinger.)

bank for one-third of the amount of his check and my check.

Q. And what happened then as to each of those three checks made out to you and endorsed by you?

A. I endorsed them, and he took them.

Q. What happened then to the amount that you did not receive from your check?

A. All I know is that he said he was going to get cashier's checks, one for Mr. Forster, one for himself, and one for me.

Q. Did you ever question him then about why you should give your check back to him and then receive a [611] lesser amount?

A. No, because that was my understanding.

Q. What did those checks represent, to your knowledge? A. Accrued wages.

Q. From what?

A. Because I was to receive six thousand a year.

Q. And how much were you receiving in regular salary? A. $170 a month.

Q. And this then was what?

A. The balance that was due.

Q. Between these amounts you actually received and the six thousand? A. Yes.

Q. How much of that were you permitted then to retain in each of those years?

A. One-third of the amount of the two checks together.

Q. And did Mr. Schneider receive any of it?

A. As far as I know, he did.

Q. And who else then? A. Mr. Forster.

(Testimony of Mazie Lovinger.)

Q. Now, the next check there, please, is 1948. What [612] is the—on the back of that exhibit—pardon me—— A. (Interposing) Oh.

Q. What is that exhibit number, please?

A. 208.

Q. Those checks, would you identify those written to yourself, please?

A. M. R. Baskett, November 1, 1948, $1,253, endorsed by M. R. Baskett and Hans Forster.

Q. What did you do with that check?

A. Endorsed it and gave it to Mr. Schneider.

Q. For what reason?

A. The same as before.

Q. Which is?

A. Well, to give to Mr. Forster, I suppose.

Q. And the other check is what?

A. M. R. Baskett, $2,507.

Q. Now, handing you Plaintiff's Exhibit 210, which has been identified as two notes and two checks, there is one written with your name upon it. Would you note the date of that note, please?

A. July 31, 1949.

Q. Did you see that note at that time?

A. No.

Q. When did you first see that note?

A. February 5, 1954. [613]

Q. And the—would you then examine the check as made out to yourself?

A. M. R. Baskett. I can't see the month. January.

Q. What date?

(Testimony of Mazie Lovinger.)

A. January 1, it looks like, 1950.

Q. And what is the amount of that check?

A. $3,244.80.

Q. Does that correspond with the note there in the same amount?

A. No, it doesn't. Yes, it does.

Q. What are the endorsements then on that check to you?

A. Mazie Baskett, M. R. Baskett.

Q. When did you receive that check?

A. It was the first part of January, of 1950.

Q. Were you told what it was for when you received it? A. Yes.

Q. Who gave it to you?

A. Mr. Schneider.

Q. What were you told when you received it?

A. To endorse it and he would take it and take care of it.

Q. And did you—what then happened to [614] that check?

A. I received one-third of the amount of these two checks together.

Q. In what form?

A. I couldn't say whether that was a cashier's check or the—or a company check.

Q. Were you told what that check was for when you received it in regard to the note?

A. Just that we were going to pick up these notes.

Q. Had you received any information about the notes prior to that time?

(Testimony of Mazie Lovinger.)

A. It was mentioned to me that they were going to make out notes.

Q. Who made out your tax returns during this period of time? A. Mr. Taylor.

Q. What amount was set forth on your tax returns during this period as salary received by you from Renton Ice and Ice Cream Company?

A. Six thousand dollars.

Q. Did you ever in any of the years between 1945 and 1949 receive six thousand dollars that you retained from Renton Ice and Ice Cream Company?

A. No. [615]

Q. Did you ever question Mr. Taylor about the preparation of your tax returns showing six thousand dollars which was more than you received from Renton Ice and Ice Cream? A. No.

Mr. LeSourd: I object to the question in that it assumes it is more than she received and the testimony shows she received.

Mr. Obenour: She said "yes," that——

Mr. LeSourd: (Interposing) Well, received and retained, was the first question, Mr. Obenour.

The Court: Well, the objection is overruled.

Q. (By Mr. Obenour): Your answer was that, please? A. No.

Q. And you ever ask Mr. Taylor why the checks were made out in that manner to you and you were required to send them back by Mr. Schneider to Mr. Forster?

A. No, I had nothing to do with the office or any part of it. * * * * * [616]

Mr. LeSourd: Mr. Griffin suggests that I proceed first, your Honor.

In the first place, if the Court please, the Defendant Taylor renews at this time his motion for severance made prior to the commencement of trial, and renewed during the Government's case.

This motion and this renewal is based upon the fact that there has occurred during this case the very situation that the motion brought to the attention of the Court prior to this trial was directed to, and that is the testimony as to hearsay, self-serving statements, on the part of some of the defendants affecting the Defendant Taylor, and, while the Court instructed the Jury that those statements were not to be taken as affecting the Defendant Taylor, nevertheless the effect of those is prejudicial, even so, to this [635] defendant and where such a motion for severance has been made in advance of the trial, it is improper not to claim the severance when that situation arises.

May I ask the Court, I have many motions here, whether the Court desires to rule on these as we go along?

The Court: Well, I will rule on them as we go along if you have completed your statement on them.

Mr. LeSourd: I have, on that.

The Court: All right, the Court will deny the motion.

Mr. LeSourd: And may the record show an exception?

The Court: I assume under the rules that an exception is automatic.

Mr. LeSourd: Yes, I assume so, also. [636]

* * * * *

[Endorsed]: Filed March 11, 1955.

[Endorsed]: No. 14656. United States Court of Appeals for the Ninth Circuit. Hans Forster, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: February 12, 1955.

Supplemental Filed March 16, 1955 and April 12, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14656

HANS FORSTER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

STATEMENT OF POINTS ON APPEAL

Pursuant to Rule 17(6) of this Court, Appellant submits the following statement of the points on which he intends to rely:

1. The Court erred in refusing to grant the defendant Forster's motions for mistrial and renewals thereof, which motions were based upon statements contained in the opening statement of counsel for defendant L. Hicks Taylor relating to the proposed defense arising out of the alleged actions of George F. Kachlein, Jr., as attorney for Taylor and Forster and were further based upon testimony adduced in support of the said defense.

2. The Court erred in excluding from evidence defendant Forster's Exhibits A-84, A-85, A-86, A-87, and A-88 which tended to prove the relationship existing between the defendants Forster and Taylor and the status of Taylor.

3. The Court erred in excluding the offered rebuttal testimony on behalf of defendant Forster of the witness Vern Egeness.

4. The court erred in excluding the offered rebuttal testimony on behalf of defendant Forster of the witness Frank B. Donaldson.

5. The Court erred in excluding the offered rebuttal testimony on behalf of defendant Forster of the witness Philip A. Strack.

6. The court erred in excluding the offered rebuttal testimony on behalf of defendant Forster of the witness Quentin Ellis.

7. The Court erred in instructing the jury, as a supplemental instruction on the issue of wilfulness at the request of the jury and over objection of defendant Forster, as follows:

"Now, to supplement that, as I say again, I am going to give you, in substance, the same matter.

"When used in a criminal statute—that is the word 'willful' or 'willfully'—when used in a criminal statute it generally means an act done with a bad purpose, without justifiable excuse, stubbornly, obstinately, perversely.

"The word is also characterized—employed to characterize a thing done without ground for believing it lawful, or conduct marked by reckless disregard whether or not one has the right to *to* act."

8. The Court erred in refusing to grant defendant Forster's motion for a new trial, based upon the error in instructions above set forth.

Dated this 11th day of February, 1955.

TRACY E. GRIFFIN,
J. KENNETH BRODY,
/s/ By J. KENNETH BRODY,
Attorneys for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed Feb. 12, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION FOR RECORD ON APPEAL

It Is Stipulated that as a part of the record on appeal in the above cause that on January 6, 1954, L. Hicks Taylor filed a motion for severance from the defendant Hans Forster and executed an affidavit which reads in part:

"* * * affiant believes that the government will present strong cases against the defendants Forster and Erickson on all nine counts and with respect to all of the allegedly unreported income * * *"

And further affiant Taylor deponed:

"That when charges were filed against the defendants named herein in March, 1952, the defendant Forster released to the newspapers carefully prepared stories emphasizing his beginnings as a penniless immigrant, carefully playing up the fact that affiant had previously pleaded guilty to a charge of attempted evasion of his own income tax liability, and stating that he, Forster, was innocent, and was in trouble only because he had trusted affiant; that both before the filing of said charges and since, the defendant Forster has conducted an artful campaign to attempt to shift to affiant responsibility for his own acts, and has induced the defendant Erickson to join him in this effort; that as a result affiant believes, and is advised by his counsel, that he will be substantially prejudiced if he is forced to stand trial jointly with the defendants Forster and Erickson because of the concerted effort they have made, and will undoubtedly continue to make during the trial, to fix upon him responsibility for their own acts;"

That the motion of defendant Taylor was argued before the Court on January 11, 1954, and after counsel for the defendant Taylor and counsel for the Government had concluded their arguments

Forster's attorney, Tracy E. Griffin stated to the Court that he opposed the motion and if the Court intended favorably to consider defendant Taylor's motion, he desired to be heard on the matter. That after this statement the Court denied the motion of the defendant Taylor for severance.

Dated this 31st day of January, 1955.

TRACY E. GRIFFIN,
J. KENNETH BRODY,
Attorneys for Appellant

/s/ CHALES P. MORIARTY,
United States Attorney, Attorney for Appellee

[Endorsed]: Filed Feb. 12, 1955. Paul P. O'Brien, Clerk.